

# **MULTILATERAL INVESTMENT GUARANTEE AGENCY**

## **Operational Policies**

The Operational Policies became effective on January 6, 2015 following approval by the MIGA Board of Directors. The new Operational Policies replace MIGA's Operational Regulations. MIGA's Policies on Environmental and Social Sustainability and Access to Information that were previously set forth in Annexes B and C to the Operational Regulations do not form part of the Operational Policies and remain as stand-alone policies, accessible at [www.miga.org](http://www.miga.org).

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## OPERATIONAL POLICIES

### DEFINITIONS

In these Operational Policies, unless the context requires otherwise,

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

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

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

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

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

**“Directive”** means a statement of substantive directions issued by the Underwriting Authority that mandates, permits or constrains activities of the Agency;

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

**“Guidance”** means a statement of information issued by the Underwriting Authority that explains a Policy, a Directive or a Procedure, or provides other guidance to staff of the Agency;

**“Host Country”** or **“Host Government”** means a member, its government or any public authority of a member in whose territories, as defined in Article 66 of the Convention, an investment which has been guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is located or is to be located;

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

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

**“Policy”** means a statement of broad substantive principles issued by the Board that mandates, permits or constrains activities undertaken to achieve institutional goals with respect to matters falling under the Board’s authority;

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

**“Procedure”** means a set of procedural instructions issued by the Underwriting Authority that must be followed to implement a Policy or a Directive, or both;

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

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



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

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

**PART I  
GUARANTEE OPERATIONS**

**Chapter One:  
Eligibility Requirements**

**Section I: Eligible Investments**

**General Requirements**

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

- (i) the type of investment;
- (ii) the resources to be invested; and
- (iii) the time of the investment.

**Type of Investment**

**Eligible Investments under Article 12**

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

- (i) equity interests pursuant to Paragraphs 1.03 and 1.04;
- (ii) shareholder loans pursuant to Paragraph 1.05;
- (iii) guarantees or other forms of security provided by a holder of equity in the Project Enterprise to secure loans made to the Project Enterprise pursuant to Paragraph 1.06; and
- (iv) non-equity direct investment pursuant to Paragraph 1.07.

(b) Non-shareholder loans shall be eligible in accordance with Article 12(b) of the Convention under the conditions referred to in Paragraph 1.09 below.

(c) In addition, Article 12(c) of the Convention authorizes the Board to decide on the eligibility of other forms of medium- or long-term investment under the conditions referred to in Paragraph 1.10 below.

**Equity Interests**

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

1.04 Cover extends to the following forms of equity interests:

- (i) shares or ownership interests in a corporation or other entity with juridical personality which is established in the Host Country;
- (ii) rights to participation in the profits and liquidation proceeds of any joint venture in the Host Country;
- (iii) ownership rights in the assets of an unincorporated branch or other establishment of the investor in the Host Country;
- (iv) ownership rights in assets that the investor has transferred into the Host Country and that will be used inside the Host Country for productive purposes for more than one year;
- (v) portfolio as well as direct equity investments, including minority participation in joint ventures, preferred stock and shares resulting from the conversion of debt instruments, with preference among portfolio investments given to those associated with foreign direct investment; and
- (vi) other forms of equity or quasi-equity interests, as may be approved by the Board.

### **Shareholder Loans**

1.05 Loans made by holders of equity in the Project Enterprise to the Project Enterprise are eligible for cover where the loan has a tenor of more than one year.

### **Loan Guarantees or Other Forms of Security Provided by Equity Investors**

1.06 Guarantees or other forms of security provided by a holder of equity in the Project Enterprise to secure loans made to the Project Enterprise are eligible for cover where the loan has a tenor of more than one year.

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

1.07 Subject to the criteria stated in Paragraph 1.08, the Agency's guarantees may be issued for the following forms of non-equity direct investment:

- (i) production-sharing contracts;
- (ii) profit-sharing contracts;
- (iii) management contracts;
- (iv) franchising agreements;
- (v) licensing agreements;
- (vi) engineering, procurement and construction contracts, turnkey contracts and related performance bonds;
- (vii) operating leases;

(viii) subordinated debt instruments with mean repayment periods of more than one year that are issued by the Project Enterprise to an equity investor or a person making any other eligible form of non-equity direct investment in the Investment Project;

(ix) guarantees or other forms of security provided for loans to the Project Enterprise where the loan has a tenor of more than one year and which are made by a person making any eligible form of non-equity direct investment pursuant to this Paragraph 1.07 in the Investment Project; and

(x) such other forms of non-equity direct investment as may be approved by the Board.

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

1.08 (a) In determining the eligibility of non-equity direct investments pursuant to Paragraph 1.07, the Underwriting Authority shall issue coverage only for investments that:

(i) have terms of more than one year; and

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

(b) Non-equity direct investments that are otherwise eligible, but do not meet the requirement specified in Paragraph 1.08(a)(ii) shall be eligible for coverage if:

(i) in case of licensing agreements as referred to in Paragraph 1.07(v) above, the licensing agreement is associated with an otherwise eligible investment of the licensor in the Investment Project; and

(ii) in case of engineering, procurement and construction contracts, turnkey contracts and related performance bonds as referred to in Paragraph 1.07(vi) above, the contractor assumes responsibility for the performance or the operation of the Investment Project at specified standards of efficiency for a period of more than one year after its completion.

(c) In no case shall the Agency provide coverage of this type, which, in its judgment and in the light of appropriate consultation, can be obtained from a government or an official export credit insurance agency of a member.

### **Non-Shareholder Loans and Similar Investments**

1.09 (a) Loans other than those eligible for cover under Article 12(a) of the Convention are eligible for coverage pursuant to Article 12(b) of the Convention.

(b) The term “loans” as used in Article 12(b) of the Convention includes:

(i) loans made to a Project Enterprise by banks, financial institutions or other persons that are not holders of equity in the Project Enterprise;

(ii) guarantees or other forms of security provided by persons that are not holders of equity in the Project Enterprise to secure a loan made to the Project Enterprise where the loan has a tenor of more than one year;

- (iii) other forms of debt instruments;
  - (iv) other financial transactions whose commercial function and objective is equivalent in all material respects to a loan; and
  - (v) swap and other hedging transactions related to any of the other forms of investment that are covered by the Agency pursuant to subparagraphs (i) through (iv) above.
- (c) The investments referred to in Paragraph 1.09(b) above shall have a minimum tenor of more than one year.
- (d) The Board's approval by special majority pursuant to Article 12(b)(ii) of the Convention for the coverage of the investments referred to in Paragraph 1.09(b) above may be issued either with respect to a particular case or as a general authorization for cover.

### **Other Forms of Medium- or Long-Term Investments**

- 1.10 (a) The Agency may cover engineering, procurement and construction contracts, turnkey contracts and related performance bonds (other than those referred to in Paragraphs 1.07(vi) and 1.08(b)) as an eligible form of medium- or long-term investment if such investment has a tenor of more than one year.
- (b) The Agency may also cover swap and other hedging transactions entered in connection with interest rate and currency risks with a tenor of more than one year if any such transaction is related to an underlying investment whether or not covered by the Agency.
- (c) Any other medium- or long-term form of investment that does not qualify for coverage under Article 12(a) or (b) of the Convention may, pursuant to Article 12(c) of the Convention, be covered if the Board so approves by special majority.
- (d) The Board's approval for cover of such investments may be issued either with respect to a particular case or as a general authorization.

### **Resources to Be Invested**

#### **Investment in Monetary Form**

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

#### **Investment in Kind**

1.12 Investments, to qualify for cover, need not be made in monetary form. They may take the form of contributions to the Investment Project of any tangible or intangible property, contract rights or other assets that have a monetary value. For the purpose of coverage, the monetary value of such investment in kind must be determined in terms of the currency in which the guarantee is issued.

## **Time of the Investment**

### **Application for Guarantee**

- 1.13 (a) In accordance with Article 12(d) of the Convention:
- (i) an investment is eligible for cover as a new investment to the extent it is implemented subsequent to the Agency's registration of the application for a guarantee; and
  - (ii) an investment is eligible for cover as an existing investment (together with a new or additional investment or on a stand-alone basis, as the case may be) if the requirements referred to in Paragraph 1.14 below are met.
- (b) For the purposes of subparagraph (a) an investment shall generally be deemed to be implemented at the time when, and to the extent that, funds or other resources are contributed to the Investment Project.
- (c) The Agency shall consider the date of the registration of the application for a guarantee when determining to what extent the investment is new or existing.
- (d) The Applicant shall be deemed to have filed an application on the date on which the Agency determines that it has received satisfactory evidence (particularly by correspondence or email) of the investor's intent or interest to obtain a guarantee from the Agency.
- (e) Where a project involves multiple investors, the extent to which an investment is new or existing shall be determined separately for each investor as of the date when that investor's application for a guarantee is registered.
- (f) The Agency shall have registered an application for a guarantee covering the acquisition of an existing Investment Project as referred to in Paragraph 1.14(a)(iii) below prior to the date on which the acquisition closes.

### **Coverage for New and Existing Investments**

- 1.14 (a) In accordance with Article 12(d) of the Convention, the Underwriting Authority may consider as eligible the following investments:
- (i) an investment in an existing Investment Project if the investment is used to modernize, expand, enhance the financial viability of or otherwise develop such existing Investment Project, in which case both the original investment and the additional investment may be considered eligible for coverage;
  - (ii) earnings from an existing investment in the Host Country if such earnings could otherwise be transferred outside the Host Country at the time of the decision on the issuance of the guarantee for such earnings;
  - (iii) the acquisition of all or part of an existing investment or Investment Project by a new eligible investor;

(iv) existing investments where an eligible investor is seeking to insure a pool of existing and new investments;

(v) existing investments owned by an eligible investor, where the investor has not made a new investment that is eligible for coverage but:

(a) has modernized, expanded, enhanced the financial viability or otherwise developed or improved the Investment Project (regardless of when such measures were implemented); or

(b) demonstrates a medium- or long-term commitment to the Investment Project,

provided that in either case the Underwriting Authority is satisfied that the Investment Project continues to have a high developmental impact in the Host Country; and

(vi) such other investments as may be approved by the Board by special majority either with respect to a particular case or as a general authorization for cover.

(b) The Agency may increase the amount of guarantee with respect to an existing investment that is already covered by the Agency for the same Guarantee Holder (regardless of whether such Guarantee Holder has made a new investment or not). Such increase in the amount of guarantee shall be subject to the Board's approval or concurrence if required pursuant to Paragraphs 3.32, 3.33 or 3.34.

1.15 The Agency also may issue guarantees for restructured investments it originally guaranteed, even where there is no new or additional investment, where those restructurings result from a claims settlement or dispute resolution process related to the original investment.

## **Section II: Eligible Investors**

### **Type of Investor**

1.16 Investors eligible to receive a guarantee may be either natural or juridical persons. Partnerships, which are not treated in essential respects as juridical persons under the law governing them, unincorporated associations and branches are not eligible as such. In such cases, eligibility is confined to the individual partners, members of the association and owners of the branch. Where in these cases some investors are eligible while others are not, a guarantee may be issued for such portion of the investment as corresponds to the eligible investors' share in the Investment Project.

### **Nationality of the Investor**

1.17 (a) In accordance with Article 13(a) of the Convention and subject to Paragraph 1.18 below, a natural person, to qualify for a guarantee, must be a national of a member of the Agency other than the Host Country.

- (b) A juridical person:
- (i) must be incorporated or established, and have its principal place of business, in a member of the Agency other than the Host Country; or
  - (ii) if such person does not meet the test in (i) above, the majority of its capital must be owned by a member or members, or nationals of a member or members, other than the Host Country.
- (c) In either case, the Agency shall advise the Host Country of the Applicant's link with the Host Country, together with the request made in accordance with Paragraph 3.23 below for the Host Country's approval of the issuance of the guarantee.

1.18 In accordance with Article 13(c) of the Convention, upon the joint application of the investor and the Host Country, the Board may, by special majority, extend eligibility to a natural person, who is a national of the Host Country, or to a juridical person, which is not eligible under Paragraph 1.17 above and is incorporated or established in the Host Country or the majority of whose capital is owned by its nationals, provided that the assets to be invested are transferred from outside the Host Country.

#### **Ownership of the Investor**

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

- 1.20 (a) In accordance with Article 13(a) of the Convention, juridical persons need not be privately owned to qualify for coverage. They may also be owned:
- (i) jointly by a member and private persons;
  - (ii) wholly by a member;
  - (iii) jointly by several members; or
  - (iv) jointly by several members and private persons.
- (b) For the purpose of subparagraph (a), the term "member" includes any agency or entity owned or controlled by a member.



### **Mode of Operations of the Investor**

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

### **Section III: Eligible Host Countries**

#### **Developing Member Countries**

1.22 In accordance with Article 14 of the Convention, an investment, to qualify for coverage, must be made in the territory of a member that is classified as a developing member country in Schedule A to the Convention, as this Schedule may be amended from time to time, or by resolution of the Council.

#### **Dependent Territories**

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

### **Section IV: Eligible Risks**

#### **Eligible Risks Under Articles 11(a) and 11(b)**

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

- (i) the currency transfer risk;
- (ii) the risk of expropriation and similar measures;
- (iii) the breach of contract risk; and
- (iv) the war and civil disturbance risk.

(b) The Agency may cover the following additional, non-commercial risks in accordance with Article 11(b) of the Convention:

- (i) the risk of acts of terrorism and sabotage (as part of the war and civil disturbance risk);
- (ii) the risk of non-honoring of sovereign financial obligations;

(iii) the risk of non-honoring of financial obligations by a state-owned enterprise or public authority; and

(iv) the risk of non-enforcement of a final arbitral award rendered pursuant to a bilateral investment treaty.

(c) In accordance with Article 11(b) of the Convention, the Board may approve by special majority other specific non-commercial risks that do not qualify for coverage pursuant to Article 11(a) of the Convention. The Board's approval for such coverage may be issued either with respect to a particular case or as a general authorization for cover. Such other risks shall in no case include the risks excluded under Paragraphs 1.56 through 1.57 below.

### **Currency Transfer Risk**

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

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

1.26 Coverage may be provided against active as well as passive restrictions on conversion and/or transfer.

1.27 Currency transfer risk coverage shall not be available for the freezing of assets of the Guarantee Holder or of the Project Enterprise. This risk may be covered under coverage for expropriation or similar measures under Paragraphs 1.31 through 1.42 below.

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

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

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

1.30 Contracts of guarantee shall also specify the basis, and the date, for determining the exchange rate or rates to be applied in calculating a claim.

## **Risk of Expropriation and Similar Measures**

### **Covered Causes of Loss**

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

1.32 Coverage may be provided against measures that prevent the Guarantee Holder from exercising its rights of ownership or control over its investment, as well as measures that deprive it of the rights themselves. Such measures may take the form of breach of contract. In the case of equity interests, covered rights may take the form of rights to dividends and profits, rights of control and the right freely to dispose of the equity interest. In the case of non-equity direct investments, such rights may take the form of claims against the Project Enterprise for agreed payments, the right to transfer such claims to third parties and rights of participation in the management of the Investment Project. Coverage may be provided against measures that prevent the Guarantee Holder from using its funds or enforcing claims against debtors in the Host Country.

1.33 Coverage may also be provided against measures that deprive the Guarantee Holder of a substantial benefit from its investment to the extent specified in the contract of guarantee pursuant to Paragraph 1.40 below. Such measures may affect:

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

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

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

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

1.36 For the purposes of Paragraph 1.35 above, the term “Host Government” may include a de facto government over the territory in which the Investment Project is located.

## **Governmental Regulations**

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

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

1.39 In applying Paragraph 1.37 above, the Agency shall endeavor not to prejudice the right of a member country or of investors under bilateral investment treaties, other treaties and international law.

## **Scope of Coverage**

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

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

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

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

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

1.42 (a) Coverage may be provided in cases of partial or total loss in the event of permanent deprivation of:

(i) covered rights of the Guarantee Holder; or

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

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

- (i) preventing the Guarantee Holder from exercising covered rights; or
- (ii) substantially diminishing the operations or profitability of the Investment Project.

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

### **Breach of Contract Risk**

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

1.43 (a) In accordance with Article 11(a)(iii) of the Convention, the Underwriting Authority may provide coverage against losses arising from a repudiation or breach by the Host Government of a contract with the Guarantee Holder in the cases set forth in Paragraph 1.44 below. In some cases, a breach by the Host Government of a covered obligation may also meet the criteria for currency transfer and expropriation risks. In such cases, a Guarantee Holder may base its claim on any of the applicable coverages.

(b) For purposes of Paragraph 1.43(a), the Agency may also provide coverage for contracts between the Project Enterprise and the Host Government:

- (i) where the Guarantee Holder has an ownership interest in the Project Enterprise; or
- (ii) where the Guarantee Holder is a lender to the Project Enterprise and such Project Enterprise has pledged or assigned to the lender all or a portion of its rights under such contract with the Host Government.

### **Denial of Justice**

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

- (i) the Guarantee Holder does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach; or
- (ii) a decision by such forum is not rendered within such reasonable period as shall be specified in the contract of guarantee, which shall be not less than two years from the initiation of a proceeding by the Guarantee Holder and the final decision by the forum; or
- (iii) a final decision cannot be enforced.

1.45 For the purpose of Paragraph 1.44 above:

- (i) a judicial or arbitral tribunal forum shall be any competent court or arbitral tribunal that is independent from the executive branch of the Host Government, acts judicially and is authorized to make a final and binding decision;
- (ii) a Guarantee Holder may be deemed to lack recourse to such a forum where access to it is denied because, for example, the Host Government has established unreasonable procedural impediments; and
- (iii) a final decision may be deemed unenforceable where the measures taken by the Guarantee Holder have not resulted in enforcement after such time period as may be specified in the contract of guarantee.

## **War and Civil Disturbance Risk**

### **Covered Causes of Loss**

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

### **Military Action**

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

### **Civil Disturbance**

1.48 Coverage against civil disturbance shall include organized violence directed against the government of the Host Country that has as its objective the overthrow of such government or its ouster from a specific region, including revolutions, rebellions, insurrections and *coups d'état*.

1.49 (a) Coverage may also be provided against civil disturbance, which takes the form of:

- (i) riot: an assemblage of individuals who commit public acts of violence in defiance of lawful authority;
- (ii) civil commotion: events which have all the characteristics of a riot but which are more widespread and of longer duration without, however, attaining the status of civil war, revolution, rebellion or insurrection; or
- (iii) terrorism: events of terrorism and sabotage.

(b) The violent acts or events referred to in this paragraph may be directed at the Host Government, at a foreign government or foreign investment, including the government of the investor's country or the nationality of the investor.

1.50 In all cases, the civil disturbance must have been caused or carried out by groups primarily pursuing broad political or ideological objectives. Acts undertaken to further labor, student or other specific interests and acts of kidnapping or similar acts directed against the Guarantee Holder shall not qualify for coverage as civil disturbance, but, if politically motivated, may be covered if the Board so decides under Paragraph 1.24(c) above.

### **Place of Covered Events**

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

1.52 In all cases, coverage shall be restricted to cases where the assets of the Investment Project have been removed, destroyed or physically damaged, or where there have been other forms of substantial interference with the operation of the Investment Project. Coverage may be extended to losses due to business interruption, including operating costs and lost net income.

### **Other Non-Commercial Risks**

#### **Non-Honoring of Sovereign Financial Obligations**

1.53 In accordance with Article 11(b) of the Convention, the Underwriting Authority may provide coverage against losses resulting from the failure of the Host Government to make a payment when due under an unconditional financial payment obligation or guarantee. This coverage does not require the investor to obtain an arbitral award, and it is applicable in situations when the financial payment obligation or guarantee of the Host Country is unconditional and not subject to any defenses other than payment. Compensation is based on the amount(s) that the Guarantee Holder is entitled to receive from the Host Government pursuant to the terms of the unconditional financial payment obligation or guarantee.

#### **Non-Honoring of Financial Obligations by a State-Owned Enterprise**

1.54 (a) In accordance with Article 11(b) of the Convention, the Underwriting Authority may provide coverage against losses resulting from the failure of a state-owned enterprise or public authority to make a payment when due under an unconditional financial payment obligation or guarantee.

- (b) For the purposes of this coverage, the state-owned enterprise or public authority must be:
- (i) controlled by the Host Government;
  - (ii) performing a public service or fulfilling a governmental function; and

(iii) creditworthy, based on factors such as the state-owned enterprise or public authority's revenue base, funding sources, history of honoring financial obligations, applicable regulatory regime, the level of direct and indirect government support and other factors relating to financial viability.

(c) This coverage does not require the investor to obtain an arbitral award, and it is applicable in situations when the financial payment obligation or guarantee is unconditional and not subject to any defenses other than payment. Compensation is based on the amount that the Guarantee Holder is entitled to receive from the state-owned enterprise or public authority pursuant to the terms of the unconditional financial payment obligation or guarantee.

#### **Non-Enforcement of Arbitral Award Rendered pursuant to Bilateral Investment Treaty**

1.55 In accordance with Article 11(b) of the Convention, the Underwriting Authority may provide coverage against losses resulting from the failure of the Host Government to enforce a final arbitral award for a specified monetary amount rendered against the Host Government pursuant to the dispute resolution mechanism set forth in a bilateral investment treaty.

#### **Agreement or Responsibility for Actions or Omissions**

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

- (i) prohibited under the laws of the Host Country; and
- (ii) carried out by the Guarantee Holder, persons acting on its behalf or the Project Enterprise to the extent that the Guarantee Holder could have exercised its rights to prevent such conduct by the Project Enterprise.

#### **Exclusion of the Risk of Devaluation and Depreciation of Currencies**

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

#### **Exclusion of Events Before the Conclusion of the Contract**

1.58 In accordance with Article 11(c)(ii) of the Convention, coverage shall exclude losses arising from any Host Government action, omission or other specific event occurring before the effective date of the contract of guarantee. In particular, no currency transfer coverage shall be issued under Paragraphs 1.25 through 1.30 above if the Applicant, on the date of the conclusion of the contract of guarantee, would only have been able to convert the currency of the Host Country accruing from its investment into the currency of guarantee at a rate below the lowest rate authorized by the exchange authority of the Host Country.

1.59 The exclusion referred to in Paragraph 1.58 need not affect the validity of contracts of guarantee in cases of events unknown to both the Agency and the Applicant at the effective date



of the contract of guarantee or of circumstances at the effective date of the contract which lead only thereafter to a specific covered event giving rise to a loss.

## **Chapter Two: Contracts of Guarantee**

### **Section I: Scope of Contracts of Guarantee**

#### **Content**

2.01 The mutual rights and obligations of the Agency and a Guarantee Holder shall be set forth in a contract of guarantee between them. Contracts of guarantee shall specify the scope of coverage and the type of loss to be compensated, including any restriction of coverage and exclusions. Contracts of guarantee shall also include provisions on the period of guarantee, termination and amendment of the contract, amount and currency of guarantee, any standby coverage, representations, warranties and undertakings of the holder of a guarantee, disputes and applicable law, as well as provisions on premiums and claims.

#### **Consistency with Convention and Policies**

2.02 Contracts of guarantee shall be consistent with the Convention and the Policies of the Agency.

### **Section II: Period of Guarantee; Termination and Amendment**

#### **Period of Guarantee**

2.03 The period of guarantee shall commence on the date of execution of the contract of guarantee unless the contract provides for a later date.

2.04 (a) The period of guarantee shall be more than one year and not more than fifteen years, provided that, in special circumstances, the Underwriting Authority and the Applicant may agree on a longer period of up to twenty years.

(b) Where the period of guarantee specified in a contract of guarantee is below the maximum limit that was approved by the Board, the Underwriting Authority may subsequently extend such period up to that limit.

#### **Termination and Amendment**

2.05 Contracts of guarantee shall include provisions specifying the circumstances in which either party may terminate the contract. Such provisions shall allow the Agency to terminate the contract in cases such as:

- (i) default in the payment of premiums;
- (ii) false or misleading statements in the application for guarantee or in other information provided to the Agency;
- (iii) non-compliance with:
  - (a) the laws or regulations of the Host Country;

- (b) the performance standards, environmental and social guidelines, and any other environmental and social standards referred to in the Agency’s Policies, Procedures and Directives; or
- (c) the Agency’s anti-corruption guidelines and any other integrity standards referred to in the Agency’s Policies, Procedures and Directives;

if such non-compliance pursuant to this subparagraph (iii) is not corrected within a period set forth in the contract of guarantee.

2.06 Contracts of guarantee shall specify the consequences of a misrepresentation, or of a breach of an undertaking by the Guarantee Holder.

2.07 Contracts of guarantee shall include provisions specifying how the contract may be amended.

### **Section III: Amount and Currency of Guarantee; Standby Coverage**

#### **Amount of Guarantee**

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

2.08 The amount of guarantee shall not exceed the percentage of cover (as defined in Paragraph 2.09 below) of:

- (i) the amount contributed by the Guarantee Holder to the Investment Project; and
- (ii) such other amounts included in the coverage as approved by the Underwriting Authority.

2.09 The term “percentage of cover” means the portion of the loss to be paid by the Agency to the Guarantee Holder in the event of a claim. The percentage of cover shall be agreed upon by the Underwriting Authority and the Applicant and shall in no case exceed:

- (i) ninety-nine percent for:
  - (a) shareholder loans pursuant to Paragraph 1.05;
  - (b) loan guarantees or other forms of security provided by equity investors pursuant to Paragraph 1.06;
  - (c) non-shareholder loans and similar investments pursuant to Paragraph 1.09;
  - (d) swaps and other hedging transactions pursuant to Paragraph 1.10(b); and
  - (e) other medium- or long-term investments pursuant to Paragraph 1.10(c), if the Board so approves by special majority; and
- (ii) ninety-five percent for all other investments.

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

2.10 The amount of guarantee may be increased through the exercise by the Guarantee Holder of a standby option, which the Guarantee Holder may have obtained pursuant to Paragraph 2.12 below. The amount of guarantee shall be reduced by the amount of any payment of a claim by the Agency under the contract of guarantee and may be reduced in other circumstances if the contract so provides.

### **Currency of Guarantee**

2.11 The amount of guarantee shall be expressed in terms of the currency of guarantee, which shall be the currency in which claims shall be paid. The currency of guarantee may be any of the currencies referred to in Paragraph 1.11 above.

### **Standby Coverage**

2.12 A contract of guarantee issued by MIGA may permit the Guarantee Holder to place on standby coverage amounts in respect of the insured investment for which there is no immediate need for coverage, as approved by the Underwriting Authority.

## **Section IV: Representations, Warranties and Undertakings of the Guarantee Holder**

### **Representations and Warranties in Connection with Applications or Claims**

2.13 Contracts of guarantee shall contain representations and warranties by the Guarantee Holder with respect to the truthfulness, accuracy and completeness of its statements in connection with an application for a guarantee and other information provided to the Agency.

### **General Undertakings**

2.14 Contracts of guarantee shall provide for undertakings by the Guarantee Holder with respect to itself, the Project Enterprise and the Investment Project, as appropriate:

- (i) to comply with the laws and regulations of the Host Country;
- (ii) to comply with the performance standards, environmental and social guidelines, and any other environmental and social standards referred to in the Agency's Policies, Procedures and Directives;
- (iii) to comply with the Agency's anti-corruption guidelines and any other integrity standards referred to in the Agency's Policies, Procedures and Directives;
- (iv) to exercise due diligence to avoid and minimize covered losses;
- (v) to retain on the Guarantee Holder's own account, throughout the period of guarantee, with no insurance coverage other than casualty insurance, a portion of the risk equivalent to the percentage of the guaranteed investment not covered by the Agency in accordance with Paragraph 2.09 above; and

(vi) to comply with such other undertakings as may be deemed necessary by the Underwriting Authority.

### **Claims-Related Undertakings**

2.15 Contracts of guarantee shall provide for undertakings by the Guarantee Holder with respect to itself, the Project Enterprise and the Investment Project, as appropriate:

(i) in case of an event that might give rise to a covered loss, to seek such administrative, judicial or other remedies as are readily available under the law of the Host Country to avoid or minimize the loss;

(ii) in case of the occurrence of an event giving rise to a covered loss, to seek available remedies with a view to reducing the amount of the loss and preserving the rights or claims related to the guaranteed investment that the Guarantee Holder has against the Host Country and other obligors;

(iii) to cooperate with the Agency in the event of a claim, or in efforts by the Agency to recover a payment from the Host Country;

(iv) to protect its assets and preserve and pursue its rights as diligently as if there were no guarantee protection; and

(v) to document a claim, including evidence as to the occurrence of any event giving rise to a covered loss and the amount of such loss.

2.16 Undertakings in the contracts of guarantee as referred to in these Operational Policies may be modified on a case by case basis, depending on the level of control exercised by the Guarantee Holder over the Project Enterprise or Investment Project.

## **Section V: Disputes and Applicable Law**

### **Disputes**

2.17 In accordance with Article 58 of the Convention, contracts of guarantee shall provide for the submission of disputes arising between the parties thereunder to arbitration for final and binding determination. Disputes shall be submitted to an arbitral tribunal of one or more arbitrators. The arbitral tribunal shall be appointed, and the proceeding conducted, in accordance with such rules as shall be specified in the contract of guarantee. The standard contract of guarantee will refer to the Rules of Arbitration for Disputes under Contracts of Guarantee of the Multilateral Investment Guarantee Agency of January 1990 (as amended from time to time). The award of the arbitral tribunal shall be final and binding on the parties. Each member of the Agency shall recognize the finality and binding nature of such an award.

### **Applicable Law**

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

## **Chapter Three: Underwriting**

### **Section I: Introduction**

3.01 The Underwriting Authority may issue Directives, Procedures and Guidance, as appropriate and consistent with these Policies, relating to underwriting matters, such as:

- (i) the assessment of the Investment Project;
- (ii) the assessment of the risks to be covered by the proposed guarantee;
- (iii) the procedures relating to underwriting decisions;
- (iv) the determination of premiums and fees to be charged by the Agency;
- (v) guarantee capacity and its allocation; and
- (vi) portfolio diversification.

### **Section II: Project Assessment**

#### **Assessments Required by Article 12(e)(i)–(iii)**

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

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

#### **Economic Soundness**

3.03 In determining whether an Investment Project is economically sound, the Underwriting Authority shall assess the Investment Project's technical feasibility and its financial and economic viability over the proposed period of guarantee.

#### **Contribution to Development**

3.04 The Underwriting Authority shall assess to what extent an Investment Project is expected to contribute to the development of the Host Country.

3.05 The Underwriting Authority shall satisfy itself that the Investment Project is consistent with:

- (i) the performance standards, environmental and social guidelines, and any other environmental and social standards referred to in the Agency's Policies, Procedures and Directives; and
- (ii) the Policies, Procedures and Directives of the Agency on integrity risk.

3.06 MIGA shall not cover investments that involve excluded activities, as defined in the Policies, Procedures and Directives of the Agency.

### **Compliance with Legal Requirements**

3.07 (a) The Underwriting Authority shall satisfy itself as to the Investment Project's compliance with the Host Country's laws and regulations at the time of the underwriting decision.

(b) MIGA shall not cover investments that do not comply with the national laws of the Host Country, including those that protect core labor standards and related treaties ratified by the Host Country.

3.08 In its assessment of the Investment Project's compliance with the Host Country's laws and regulations, the Underwriting Authority may rely on internal analysis, on an independent external legal opinion or, to the extent appropriate, on representations of the Applicant.

3.09 The Underwriting Authority may rely on a statement by the Host Country as evidence that the Investment Project conforms to the laws and regulations referred to in Article 12(e) of the Convention and Paragraph 3.07 above.

3.10 In appropriate cases, the Underwriting Authority may deem the Investment Project to comply with the laws and regulations, including in particular any investment codes, of the Host Country in the light of other evidence, such as an investment contract between the Applicant and the Host Country or a formal admission of the investment by the Host Country.

3.11 The Underwriting Authority shall deny coverage if the government of the Applicant's home country notifies the Agency that the investment would be financed with funds transferred from the home country in violation of its laws.

### **Consistency with Development Objectives**

3.12 The Underwriting Authority shall satisfy itself as to the Investment Project's consistency with the declared development objectives and priorities of the Host Country at the time of the underwriting decision.

3.13 The Underwriting Authority may rely on a statement by the Host Country as evidence that the Investment Project conforms to the objectives and priorities referred to in Article 12(e) of the Convention and Paragraph 3.12 above.

### **Reliance by the Agency**

3.14 The Underwriting Authority may, in making its assessment of the Investment Project, rely to the extent appropriate on statements of the Applicant.

3.15 Where appropriate, the Agency may base its assessment of the Investment Project on appraisals or documents of other reliable institutions.

### **Section III: Risk Assessment**

#### **Nature of Risk Assessment**

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

#### **Scope of Risk Assessment**

3.17 (a) The Underwriting Authority's assessment shall have regard to risk factors and risk mitigants that relate to:

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

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

#### **Assessment of Legal Protection for the Investment**

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

3.19 (a) An investment will be regarded as having adequate legal protection if it is protected:

- (i) pursuant to the terms of a bilateral investment treaty between the Host Country and the home country of the investor;
- (ii) pursuant to an agreement between MIGA and the Host Country, in accordance with Article 23(b)(ii) of the Convention and Paragraph 3.20(a)(i) below, which affords legal protection through a bilateral investment treaty between the Host Country and a country other than the home country of the investor; or
- (iii) under the law and practice of the Host Country where such laws and practice are deemed to be consistent with international law by the Agency.



(b) Any assessment by the Agency pursuant to Paragraph 3.19(a)(iii) shall be conducted in strict confidentiality and its outcome shall be shared only with the government concerned with a view to enabling it to improve the investment conditions in its territory.

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

- (i) the treatment of guaranteed investment in accordance with Article 23(b)(ii) of the Convention; and
- (ii) the use of local currency which the Agency may receive in future as subrogee of the Guarantee Holders, as provided in Article 18(c) of the Convention.

(b) Such agreements referred to in Subparagraph (a) above may apply to one or all guaranteed investments in the Host Country.

(c) Under agreements of the type referred to in Subparagraph (a)(ii) above, the Agency may seek to obtain the Host Country's consent to the sale by the Agency of local currency to international lending or other institutions, or to foreign investors in, or importers of goods from, the Host Country. The Host Country may also undertake under such an agreement to redeem the local currency for a freely usable currency within a specified period and at a specified rate of exchange.

#### **Section IV: Procedures Relating to Underwriting Decisions**

##### **Applications for Coverage**

3.21 The Underwriting Authority may develop Directives, Procedures and Guidance, as appropriate, with respect to the preparation and registration of applications for coverage.

##### **Obtaining Host Country Approval**

3.22 In accordance with Article 15 of the Convention, a guarantee may only be issued if the Host Country has previously approved the issuance of the guarantee by the Agency against the risks designated for cover.

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

- (i) identify the Applicant (including any link of the type referred to in Paragraph 1.17 above that the Applicant may have with the Host Country), and the Project Enterprise, if different from the Applicant (provided that in identifying the Applicant or the Project Enterprise, a generic description may suffice in either case if the names are not then available);
- (ii) identify the Investment Project;

- (iii) specify the amount of guarantee under consideration and any contemplated standby coverage;
- (iv) specify the proposed period, or periods of guarantee; and
- (v) designate the risks proposed for coverage.

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

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

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

#### **Facilitating Prompt Underwriting Decisions**

3.27 The Underwriting Authority shall issue Directives, Procedures and Guidance as appropriate to expedite the processing of applications for guarantees and the taking of decisions thereon.

#### **Confidentiality and Disclosure of Information**

3.28 The Agency shall safeguard information received on a confidential basis and shall in particular safeguard business information of a proprietary character received from Applicants or Guarantee Holders so as to avoid its disclosure to actual or potential competitors. Information shall be disclosed in accordance with MIGA's policy on access to information.

3.29 Requests to a prospective Host Country for its approval of a proposed investment, or arrangements for advance approval by a Host Country and arrangements for parallel or joint underwriting and reinsurance shall incorporate appropriate measures to preserve confidentiality in accordance with Paragraph 3.28.

#### **Enhancement of Risk Profile**

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

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

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

(iii) after considering possibilities under (i) and (ii) above, design coverage in a manner that diminishes risk, but still encourages the Applicant to proceed with the investment.

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

### **Approval of Contracts of Guarantee**

#### **Approval of Contracts of Guarantee by the President**

3.31 In accordance with Article 16 of the Convention, approval of the contracts of guarantee shall be the responsibility of the President under the direction of the Board. The President shall therefore only approve the issuance of contracts of guarantee that are consistent with these Operational Policies and other Policies issued by the Board from time to time.

#### **Direction by the Board in the Form of Concurrence**

3.32 Except as set forth in Paragraphs 3.33, 3.34 and 3.38, Board concurrence shall be required for the issuance of a contract of guarantee.

#### **Direction by the Board in the Form of Approval**

3.33 Board approval by special majority shall be required according to the Convention and these Operational Policies on the following matters:

- (i) coverage of non-commercial risks as referred to in Article 11(b) of the Convention, unless such coverage has been generally authorized by the Board;
- (ii) coverage of investments referred to in Articles 12(b)(ii), 12(c) and 12(d)(vi) of the Convention, unless such coverage has been generally authorized by the Board; and
- (iii) issuance of a guarantee to a national of the Host Country under Article 13(c) of the Convention.

3.34 Board approval by majority shall be required according to these Operational Policies on the following matters:

- (i) coverage of other forms of equity and quasi-equity investments pursuant to Paragraph 1.04(vi) above and other forms of non-equity direct investment pursuant to Paragraph 1.07(x) above;
- (ii) coverage of an investment in a dependent territory for whose international relations a member is responsible, to the extent that the Board has not already designated the territory as a developing member country under Paragraph 1.23 above; and

- (iii) exceptions from the limits established by or pursuant to Paragraphs 3.56 and 3.57.

### **President's Report to the Board**

3.35 The President shall circulate to the Directors a report on each guarantee the President plans to approve, including information on the Host Country, the investment, as well as the amount, terms and conditions of the guarantee. Each such report shall include a statement by the President to the effect that the proposed guarantee is consistent with the Convention, these Operational Policies and other Policies issued by the Board, together with an indication of any new policy issues involved.

### **Board Decision Through Meeting or on a No-Objection Basis**

3.36 Any guarantee with respect to which the President determines that it relates to an Investment Project involving:

- (i) a particularly high risk;
- (ii) an important policy implication;
- (iii) high learning potential or innovative features; or
- (iv) an area of special interest to the Board,

shall, before it is approved by the President, be submitted to a meeting of the Board to obtain the Board's concurrence pursuant to Paragraph 3.32 that the guarantee is within the Operational Policies and any other Policies issued by the Board, or approval pursuant to Paragraphs 3.33 or 3.34.

3.37 Any other guarantee shall, before it is approved by the President, be submitted to the Board for its concurrence or approval without calling a meeting of the Board unless a Director requests such a meeting within eight working days of dispatch of the President's report referred to in Paragraph 3.35 to them, in which case such guarantee shall be discussed at a meeting of the Board to obtain the Board's concurrence or approval. The Board shall discuss the issues raised by such requests and may give guidance to the President with regard to such issues, which may include a directive not to proceed with the issuance of the guarantee.

### **Expedited Approval Process for Small Guarantees**

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

- (i) there is a justification and recognized need to expedite the approval process for such types of guarantees; and
- (ii) each such guarantee approved by the President in accordance with the waiver is reported to the Board each quarter pursuant to Paragraph 3.39 below.

(b) The waiver shall not apply to guarantees where approval of the Board is required under Paragraphs 3.33 or 3.34.

### **Quarterly Report to the Board on Guarantees**

3.39 Each quarter or with such periodicity as the Board may direct, the President shall prepare and submit to the Board for its review a report on the guarantees approved during the preceding quarter.

## **Section V: Premiums and Fees**

### **Overview and Objectives**

3.40 Pursuant to Article 26 of the Convention, premiums, standby fees, application fees and, if applicable, other fees shall be charged for guarantees issued by the Agency.

3.41 In addition, the Agency may charge additional fees or seek reimbursement for:

- (i) special services provided in connection with its guarantees, and
- (ii) other services provided by the Agency (including services rendered under Part II of these Operational Policies).

3.42 Premiums and fees shall, pursuant to Article 25 of the Convention, be established in accordance with sound business and prudent financial management practices and with due regard to the need to:

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

### **Determination of Premium and Fees**

3.43 The Underwriting Authority shall determine the premium rates and standby or other fees applicable from time to time and the schedule for the payment of premium and standby or other fees.

3.44 The Underwriting Authority shall be entitled to adjust the premium rates and standby or other fees as applicable, if the contract of guarantee or the relevant agreement so provides.

### **Review of Premiums and Fees**

3.45 The Underwriting Authority shall periodically review the levels of premiums and fees to determine whether they are consistent with the Agency's purpose of encouraging investment and its obligation to maintain a sound financial position.

## **Section VI: Guarantee Capacity and Its Allocation**

### **Limit of Guarantee Capacity**

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

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

3.48 (a) The amount of reinsurance obtained by the Agency that may be deemed to constitute an addition to the guarantee capacity shall be one hundred percent of the reinsurance, provided that the Agency is satisfied with the financial reliability of the reinsurer. The reinsurance that can be added to the guarantee capacity must be consonant with the terms and conditions of the reinsured contract of guarantee, except that contracts of reinsurance may have a shorter tenor than the reinsured contracts of guarantee, and shall either:

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

(b) The President shall, from time to time, review the Agency's reinsurance coverage and recommend to the Board such revisions of this provision as the President deems appropriate, including any addition to guarantee capacity that may properly be attributed to reinsurance, or reinsurance that is not consonant with a reinsured contract or contracts except as provided in Subparagraph (a)(i) above.

### **Reinsurance Limits**

3.49 The aggregate amount of contingent liability assumed by the Agency through its issuance of reinsurance shall not exceed fifty percent of its guarantee capacity. The aggregate amount of contingent liability assumed by the Agency on account of reinsurance, which it may issue in respect of investments, which have been completed more than twelve months before the request for such reinsurance shall at no time exceed ten percent of the Agency's aggregate contingent liability calculated in accordance with Paragraphs 3.47 and 3.48.

## **Review**

3.50 The President shall maintain a status report of the current amount, utilization and projected changes in the Agency's guarantee capacity and make recommendations to the Board regarding changes in the provisions of Paragraphs 3.46 through 3.49 above that the President may believe to be indicated by experience. In order to assist the Board in its consideration of whether changes in the limit of guarantee capacity, within the overall limit provided for in Article 22(a) of the Convention, should be recommended to the Council, the President shall, at least semi-annually, inform the Board of the risk profile of the Agency's portfolio and of any significant constraints on the Agency's fulfillment of its mandate attributable to the limit of guarantee capacity.

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

## **Allocation of Guarantee Capacity Among Members**

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

3.53 For the purpose of attributing a guarantee to a member in cases where a corporate Applicant's place of incorporation and principal place of business differs from the country of which the owners of the majority of its capital are nationals or where the nationality of such owners cannot be proved by the Applicant, the Agency shall deem the Applicant to be from:

- (i) the member in which the Applicant is incorporated and has its principal place of business; or
- (ii) if the Applicant is incorporated and has its principal place of business in a non-member:
  - (a) the member under whose official investment guarantee program the Applicant is eligible for coverage; or
  - (b) the member or members on which the Applicant's eligibility otherwise depends.

## **Host Countries**

3.54 The Agency shall endeavor to encourage investment in as large a number of Host Countries as possible, consistent with its developmental objective and prudent risk management subject to the requirements of Paragraphs 3.55 through 3.57 below.

## **Section VII: Portfolio Diversification**

### **General Requirements**

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

### **Risk Diversification Measures**

3.56 The President shall report to the Board annually on the measures taken for the purpose of avoiding and mitigating excessive concentration of risks. Such report shall include an evaluation of the Agency's reinsurance activities.

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



## **Chapter Four: Claims**

### **Section I: Objectives**

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

- (i) comply with its obligations under contracts of guarantee;
- (ii) maintain a sound financial position and endeavor to meet its financial obligations from its revenues, reserves and capital paid in cash;
- (iii) inspire and maintain the confidence of investors in the Agency's guarantee protection; and
- (iv) encourage the negotiated settlement of disputes relating to guaranteed investment and promote increased investment in the Host Country.

4.02 To further the foregoing objectives, the Agency shall:

- (i) cooperate with Guarantee Holders and Host Governments with a view to avoiding covered losses;
- (ii) be prepared to facilitate or to provide its good offices in the settlement of disputes between Guarantee Holders and Host Governments;
- (iii) require Guarantee Holders to seek to protect the Investment Project and to preserve and pursue their rights as diligently as if they had no guarantee protection;
- (iv) assess claims on the basis of their legal merits and promptly pay valid claims;
- (v) pursue, in accordance with sound business practices, recovery of payments from Host Countries; and
- (vi) make reasonable efforts to reach amicable settlements in accordance with sound business practices with Host Countries on rights and claims acquired through subrogation or otherwise.

### **Section II: Claims Administration**

#### **Actions on Notice of Imminent Losses and on Receipt of Claims**

4.03 Upon receiving a notification from the Guarantee Holder of any event that might give rise to a covered loss or significantly increase the likelihood of such a loss, or upon learning by other means of an event which might give rise to a covered loss, the Agency shall, where appropriate, consult with the Host Government, the Guarantee Holder and other stakeholders.

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

of the claim, and as appropriate:

- (i) advise the Guarantee Holder of any information that may be needed to support the claim and to facilitate negotiation of a settlement with the Host Country;
- (ii) consult with the Guarantee Holder on steps which may facilitate withdrawal, or minimization of a claim and the preservation of the rights of the Guarantee Holder against the Host Country or other obligors; and
- (iii) consult with the Host Government on the accuracy and completeness of information provided by the Guarantee Holder regarding the claim and on measures that may be taken to facilitate withdrawal, or minimization of a claim, including mediation or facilitation by the Agency of a negotiated settlement between the Host Government and the Guarantee Holder.

4.05 Contracts of guarantee shall entitle the Agency to deny payment of any claim which is filed more than three years after the occurrence of the covered event or after such other period as the contract of guarantee may provide.

#### **Prompt Determination and Settlement**

4.06 The Agency shall endeavor to make a prompt determination as to its liability to pay a claim after all the information supporting the claim that the Agency may require has been submitted by the Guarantee Holder or otherwise obtained. Contracts of guarantee shall specify periods for such determination.

#### **Decisions on Claims**

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

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

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

#### **Pursuit of Remedies by Guarantee Holders**

4.08 Contracts of guarantee may require Guarantee Holders to follow instructions of the Agency in pursuing the remedies referred to in Paragraphs 2.15(i) and 2.15(ii) above. A claim may be paid while a proceeding to obtain such a remedy is pending, but, subject to the contract of guarantee,

the Agency may delay or deny payment if the Guarantee Holder has not promptly initiated and diligently pursued such proceeding as instructed by the Agency.

4.09 If rights or claims of a Guarantee Holder referred to in Paragraph 4.14 below are subject to an agreement providing for arbitration in a forum that may not be available to the Agency, then the Agency may, upon notifying the Guarantee Holder of its decision to pay the claim, require the Guarantee Holder to pursue these rights or claims in such forum and make such arrangements with the Guarantee Holder as may be necessary for this purpose. The Agency may make an advance payment to the Guarantee Holder while the arbitration proceeding is pending, subject to the right of the Agency to reimbursement under such conditions as may be agreed upon between the Guarantee Holder and the Agency. The Agency may reimburse a Guarantee Holder for all, or part of, the expenses that the Guarantee Holder incurs in pursuing the remedies referred to in this Paragraph and in Paragraphs 2.15 and 4.08 above.

### **Amount of Compensation**

4.10 (a) Contracts of guarantee shall provide, or refer to rules and principles, including appropriate accounting principles, for the calculation of the amount of compensation. Such amount shall not exceed the lesser of:

- (i) the amount of guarantee referred to in Paragraph 2.08 above; and
- (ii) the percentage of cover, as defined in Paragraph 2.09 above, of the amount of the loss as defined in the contract of guarantee and of the amounts referred to in Paragraph 4.11 below.

(b) For the purposes of determining compensation, the value of a guaranteed equity investment shall be the book value or the fair market value of the guaranteed investment, or either value as adjusted, as the contract of guarantee shall provide in each case.

(c) The relevant value of a guaranteed investment shall be determined as of the time immediately before the occurrence of the loss.

4.11 If the Guarantee Holder agrees to reinvest in the Investment Project any compensation by the Agency for damage to tangible assets, contracts of guarantee may provide for compensation on the basis of replacement value. As provided for in Paragraph 1.52, contracts of guarantee may also provide for compensation for losses arising from an interruption in the operation of the Investment Project, but in no case shall total compensation exceed any of the ceilings referred to in Paragraph 4.10 above.

### **Documenting Claims and Revising Payments**

4.12 The Agency may obtain information on a claim from the Guarantee Holder, through consultations with the Host Government, or by other means. The responsibility for proving a loss under a contract of guarantee shall at all times rest with the Guarantee Holder.

4.13 If the Agency determines that compensation is payable, but conditions in the Host Country prevent the Agency from ascertaining within a reasonable period all facts necessary to determine the precise amount due, it may calculate the amount of compensation on the basis of the

information then available. In such a case, the Agency may, in the light of subsequently received information, revise its calculation and reclaim, or add to a payment accordingly. Contracts of guarantee may also entitle the Agency, in case new evidence is discovered which shows that there was an error in determining the payment, to reclaim such payment to the extent of the error within a specified period as set forth in the contract of guarantee.

### **Section III: Subrogation and Assignment**

#### **Scope and Time of Subrogation and Assignment**

4.14 In accordance with Article 18(a) of the Convention, contracts of guarantee shall provide that, at the time specified in the contract of guarantee:

- (i) the Agency shall be subrogated to such rights or claims related to the guaranteed investment as the Guarantee Holder may have had against the Host Country or other obligors; and
- (ii) if required by the Agency and subject to the contract of guarantee, the Guarantee Holder shall forthwith assign to the Agency all such rights or claims that it is legally or contractually able to assign.

4.15 Contracts of guarantee may also provide for the assignment by the Guarantee Holder to the Agency of:

- (i) funds or other assets related to the guaranteed investment, which are received from or deposited for the account of the Guarantee Holder by the Project Enterprise, the Host Country or any other person after the occurrence of the event giving rise to the covered loss; and
- (ii) securities, titles, contracts or other documents, which evidence the interest of the Guarantee Holder in, or its rights against, the Project Enterprise and the Guarantee Holder's ownership of assets contributed to the Investment Project, or which are otherwise relevant to rights, claims or assets related to the guaranteed investment.

#### **Extent of Subrogation and Assignment; Recovery in Excess of Payment**

4.16 (a) Any rights, claims and other interests acquired in accordance with Paragraphs 4.14 and 4.15 above shall represent such portion of the relevant rights, claims and other interests as corresponds to the portion of the investment which is covered by the guarantee. With the approval of the Host Country, the Agency:

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

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

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

#### **Section IV: Recovery from Host Countries**

##### **Decisions on Seeking Recovery**

4.18 Decisions on seeking recovery of payments from Host Countries shall be made by the President on the recommendation of the Claims Committee referred to in Paragraph 4.07 above. In seeking such recovery, the Agency shall make every effort to reach a negotiated settlement on a sound financial and business basis with the Host Country concerned. Settlements involving a write-off of more than \$2 million shall require the approval of the Board.

##### **Procedures**

4.19 Unless the Agency and the Host Country have concluded an agreement on the settlement of disputes in accordance with Article 57(b) of the Convention, the Agency shall follow the procedure set forth in Paragraphs 4.20 through 4.22 below in seeking recovery of payments from Host Countries.

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

4.21 If negotiations fail, the Agency shall either:

- (i) before submitting the dispute to arbitration, propose to the Host Government that the dispute be submitted to conciliation in accordance with Article 3 of Annex II to the Convention; or
- (ii) submit the dispute directly to arbitration in accordance with Article 4 of Annex II to the Convention.

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

## **Chapter Five: Parallel and Joint Underwriting, Reinsurance and Administrative Cooperation**

### **Section I: General Principles**

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

5.02 The Agency shall endeavor to:

- (i) strengthen, through its participation, the confidence of other parties to, and guarantors of, Investment Projects in their security;
- (ii) supplement existing capacity to guarantee foreign investment against non-commercial risks in developing member countries, especially in new productive projects of high developmental impact;
- (iii) extend the benefits of the Agency's guarantee capacity by sharing coverage of investments with other official and private insurers to the extent feasible and consistent with its developmental mandate;
- (iv) complement the types of protection currently available from other insurers for both equity and non-equity forms of investment against non-commercial risks that pose significant deterrents to investment, thereby encouraging forms of investment appropriate to particular opportunities and compatible with the policies of particular Host Countries;
- (v) through example, joint responses to individual investors, and broader consultation, stimulate improvements in the scope of investment guarantees and other support for foreign investment offered by both official and private agencies; and
- (vi) effect administrative economies by sharing information and support functions with cooperating agencies, as may be feasible and appropriate.

### **Section II: Cooperation with Other Entities**

#### **Mechanisms and Forms of Cooperation**

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

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

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

### **Parallel and Joint Underwriting**

5.06 The Underwriting Authority shall endeavor to realize the objectives stated in Paragraphs 5.01 and 5.02 above and to diversify the guarantee portfolio in accordance with Paragraph 3.55 above by sharing risks through parallel and joint underwriting with official and private insurers.

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

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

### **Reinsurance**

5.09 Consistent with Articles 20 and 21 of the Convention, the Agency may cooperate with official agencies of members, regional agencies the majority of whose capital is owned by members, and private entities through reinsurance and similar risk-pooling arrangements.

### **MIGA as Reinsured Party**

5.10 The Agency may obtain reinsurance in respect of its guarantees, or portions thereof, from any appropriate entity on either an individual or composite basis. In obtaining reinsurance, the Underwriting Authority shall give primary consideration to achieving a reduction of exposure to losses proportionate to the cost of reinsurance and to expanding the Agency's guarantee capacity, as defined in Paragraph 3.46 above. The Underwriting Authority shall negotiate reinsurance premiums that reflect the distinctive elements of security, as well as particular risks in the Agency's guarantees to be reinsured.

### **MIGA as Reinsurer**

5.11 (a) The Agency may issue reinsurance in respect of guarantees of specific investments issued by an official agency of a member, or by a regional agency, the majority of whose capital is owned by members, or by a private insurer whose principal place of business is in a member country, subject to the provisions of Article 20 of the Convention, the limit set by Paragraph 3.49 above, this Paragraph 5.11 and Paragraph 5.12 below.

(b) Reinsurance issued by the Agency, as reinsurer, to official agencies of members, regional agencies or private insurers, as cedants, shall be restricted to investments that are consistent with the purposes of the Convention and meet the eligibility requirements of Articles 11 through 14 of the Convention and Chapter One of these Operational Policies.

(c) Contracts of reinsurance shall be approved by the President under the direction of the Board according to the procedures for the approval of contracts of guarantee set forth in Paragraphs 3.31 through 3.39 above, which shall apply accordingly. In accordance with Article 20(b) of the Convention, the Board shall approve each issuance of a contract of reinsurance in respect of an investment made prior to the Agency's receipt of the application for such reinsurance.

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

### **Administrative Cooperation and Brokerage**

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

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

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



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

**Section III: Administrative Cooperation with the World Bank and the IFC**

5.17 The Underwriting Authority shall seek to encourage investment supportive of programs assisted by the World Bank and the IFC. Pursuant to Paragraph 5.01 above and Part II of these Operational Policies, the Agency shall make arrangements for systematic consultation and exchange of relevant information with the World Bank and the IFC, subject to safeguards regarding the confidentiality of information available to each institution.

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

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

**Chapter Six:  
Guarantees of Sponsored Investments**

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

**PART II**  
**CONSULTATIVE AND ADVISORY ACTIVITIES**

**Chapter Seven:**  
**Investment Promotion, Advisory and Consultative Programs**

**Section I: Mandate**

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

**Section II: Programs**

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

- (i) research;
- (ii) dissemination of information;
- (iii) technical advice and assistance; and
- (iv) consultation with and among interested members on investment policies and programs.

(b) Subject to Paragraphs 7.08 and 7.09 below, these activities shall be carried out under the general control of the Board, in accordance with the following guidelines.

**Section III: General Principles and Priorities**

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

7.04 The Agency's technical assistance, advisory, information and research services shall concentrate on aspects of investment issues in which it has comparative advantage and that are

not adequately served by other institutions, such as the identification of policies that discourage foreign investment. In further delineating its fields of specialization in technical assistance and advisory services, the Agency will be guided by the requests of members, the availability of expertise and financial support, and the insights gained from the operation of its guarantee and research programs, from the multilateral consultations undertaken within the Council and the Board, and from consultations with investors and other insurers.

## **Priorities**

### **Policy Consultation**

7.05 Priority shall be given to the examination of national measures that have proven to be effective in enhancing the flows of international investment to developing countries and have resulted in social and economic benefits to such countries. The Agency's consultations may, in particular, address the policies of both developed and developing countries that have had significant positive or negative effects on the volume and developmental quality of such flows. The Agency may draw on these consultations in devising a framework for providing policy advice to interested members.

### **Technical and Advisory Services**

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

### **Support of Guarantee Program**

7.07 Priority in research activities and consultation with or among members on national environments for investment shall be given to the operational needs of the guarantee program. The Agency's internal requirements will direct its research toward acquiring the knowledge essential to conducting an effective and viable guarantee program, such as assessments of a Host Country's investment policies, including nationalizations and any disputes it has had with other investment insurers; tax and regulatory regimes; judicial and other mechanisms for the settlement of disputes; human and natural resource endowments; and other economic factors relevant to prospective guaranteed investments. Research on particular countries also will facilitate the Agency's development of a program of collaborative research with members on comparative assessments of particular national measures for investment promotion or regulation. Consultations undertaken by the Agency's management with a member, or organized by it among members, shall address the conditions in member countries requisite or conducive to effective operation of the guarantee program and generally to attracting foreign investment.

### **Administration**

7.08 The Agency shall cooperate with, rather than duplicate, the work of other agencies of established competence in the economic and financial aspects of national environments for foreign investment. Projects primarily intended to provide technical or advisory services to members and

research essential to such services shall be designed and carried out in consultation with or by the World Bank and IFC. Other technical, advisory and consultative activities primarily designed to serve the membership of the Agency as a whole or to support the guarantee program may be carried out solely by the Agency or in association with other international or national agencies, as it judges in each case to be most effective and appropriate. The Agency shall consult closely with the World Bank and the IFC with a view to maintaining consistency in the advice given to members on investment matters. The Agency also shall consult as appropriate with the relevant agencies of the United Nations and relevant national agencies in regard to requirements for assistance on institutional development.

#### **Section IV: Organization**

##### **Programming and Budgeting**

7.09 Plans and financial estimates related to all technical, advisory and consultative activities shall be prepared by the President and included in the annual budget submitted to the Board for approval in accordance with Section 4 of the Financial Regulations; provided, however, that the President may increase the approved programs insofar as expenditure of the Agency's own funds is not thereby increased.

##### **Reporting**

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