



**GENERAL CONDITIONS
for
Investment guarantees**

November 15, 2005

PREFACE

The investment guarantee system has been extended to cover so called investment loans and a facility whereby EKN can offer guarantees in foreign currency. As a result of this, new general conditions have been drawn up.

The new terms and conditions have been drafted to conform to the 1996 General Conditions for Export Credit Guarantees. They have also been clarified and simplified.

Most of the general conditions are accompanied by commentaries intended to facilitate understanding of the conditions and regulate particular points in more detail. The commentaries are as binding on EKN and the guarantee-holder as the conditions.

The new conditions, which replace the 1991 general conditions, apply to investment guarantees that are issued on the basis of applications received by EKN after November 15, 2005.

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DEFINITIONS OF CERTAIN TERMS

The following definitions are used in these general conditions and commentaries.

Default interest: interest accrued after the due payment date;

Loss: loss caused by an event as referred to in 2.2 and calculated in the manner referred to in 5.2;

Event causing loss: event as referred to in 2.2;

Guarantee : the document whereby a guarantee is issued;

Guarantee percentage: the percentage of a loss incurred which is eligible for indemnification under the guarantee. Compare excess risk;

Investment: the investment described in the guarantee;

The investment company: the company or equivalent in which the investment is made or to which the investment loan is granted and which is named in the guarantee;

Investment loan: an investment that is made in the form of a loan to the investment company;

Market rate: As regards guarantees issued in SEK, the interest rate published by Reuters information system on the “SIOR” display, or via such other system or on such other display as replaces the aforementioned system or display and which is based on the average of the interest rates quoted by banks in Sweden on the interbank market in Stockholm (Stockholm Interbank Offered Rate, STIBOR) for loans in SEK for a three-month period at 11 a.m. two banking days in Stockholm prior to the date, from which the rate shall be calculated in each specific case, and thereafter two banking days in Stockholm prior to the start of each three-month period, all of which with the addition of a quarter of a percentage point (0.25);

As regards guarantees issued in USD, CHF, JPY and EUR, the interest rate published by Reuters on the ISDA page or through such other page or system that replaces the aforementioned system or page, and which is based on the average of the interest rates quoted by banks on the interbank market in London (London Interbank Offered Rate, LIBOR) for loans in the currency in question for a period of three months at 11.00 a.m. two banking days in London prior to the date from which the interest rate shall be calculated in each specific case, and thereafter two banking days in London prior to the first day of each three-month period, all of which with an addition of a quarter of a percentage point (0.25).

Excess risk: the percentage of a loss that has been incurred that is not eligible for indemnification under the guarantee. Compare the guarantee percentage;

Indemnification: payment of compensation under the guarantee;

Debt rescheduling/consolidation agreement: an agreement between the Swedish government or EKN, on the one hand, and the government or a government agency in the

debtor's country on the other hand, containing a generally valid agreement whereby EKN-guaranteed payments from the latter country to Sweden are postponed, etc;

Host country: the county in which the investment is made and which is named in the guarantee.

2. SCOPE OF THE GUARANTEE ETC

2.1 General

A guarantee entitles the guarantee-holder to indemnification for a certain percentage of a loss incurred by the guarantee-holder as a consequence of an event as referred to in 2.2, which has occurred during the term of the guarantee. The loss is calculated in the manner stated in 5.2. The guarantee states the percentage of the loss eligible for indemnification as well as the maximum amount of loss covered by the guarantee.

The guarantee may include special conditions that complement or deviate from these general conditions. In such case these special conditions are stated in the guarantee.

Commentary

For the term of the guarantee, see 2.5 and, for the maximum amount of loss covered by the guarantee, see 5.3.

2.2 Events causing loss

Losses caused by the following events will be indemnified under the guarantee.

a) Nationalisation, expropriation etc

Nationalisation, expropriation or other similar measure taken by a public authority in the host country, entailing

the guarantee-holder being deprived of the right to or control over all or part of the investment or the return therefrom, or

the investment has lost all or part of its value, or

obstacles or delays having arisen that affect repayment of the investment loan or interest thereon to the guarantee-holder.

However, measure as referred to above does not include measures in the host country which are essentially of a generally regulative or fiscal nature and which are generally applicable, or, actions which, without being discriminatory, are required in the interest of public order and safety or of public health.

b) Certain breaches of agreement

An action, whereby a public authority in the host country unlawfully cancels or is in breach of an agreement that has been reached between the guarantee-holder and the public authority in the host country by virtue of the investment and which entails

the guarantee-holder being deprived of the right to or control over the whole or a part of the investment or the interest thereon, or

that the investment has lost all or part of its value, or

obstacles or delays having arisen that affect repayment of the investment loan or interest thereon to the guarantee-holder.

c) Instability in or failure of economic or public authority functions

Instability in or failure of society's or public authority functions that cause a deterioration in the conditions for utilising the investment to such a degree that

the investment has lost all or part of its value, or

obstacles or delays having arisen that affect repayment of the investment loan or interest thereon to the guarantee-holder.

d) War, civil disturbance, natural catastrophe etc

War, civil disturbance, natural catastrophe or any other exceptional events in the host country that have resulted in

all or part of the investment being damaged, destroyed or losing its value, or

or obstacles or delays having arisen that affect repayment of the investment loan or interest thereon to the guarantee-holder.

However, a loss caused by an event as described above is not eligible for indemnification if, and to the extent that, the guarantee-holder has been able to obtain cover against such a loss by taking out commercial insurance or by other, similar means.

An investment is not deemed to have lost part of its value in accordance with the points stipulated in 2.2 a) – d) until its value, calculated in accordance with 5.2.1, has declined for a continuous period of at least six months as a result of the loss-causing event. This period does not apply, however, in the event of the investment being partially destroyed owing to an act of war or a natural catastrophe.

A loss caused by an event as referred to in 2.2 a)-d) and which relates to repayment of an investment loan or interest thereon shall not be deemed to have occurred before payment has been in default for a continuous period of four months.

e) Obstacle to currency transfers

An action unexpectedly taken by a public authority in the host country which has prevented or delayed the transfer from the host country to the guarantee-holder of

invested capital or return, remuneration or compensation thereon, or

repayment of investment loan or interest thereon, or

the amount relating to the utilisation of guarantees, pledged assets or other similar security.

For a loss according to 2.2 e) to be deemed to have occurred, a period of four months shall have elapsed; this period of time is calculated from the date when the investment company took the measures required for the transfer. If a debt rescheduling/consolidation agreement has been entered into for the amount in question, no time period is applied.

Commentary

General

Regarding the time of loss, see also 2.4.

Regarding obligation to report loss, see 4.1.

By public authority as referred to in 2.2 is also meant any corresponding public agency.

In certain cases, failure by the public authority to carry out a measure can lead to consequences as stated in 2.2. The provisions of 2.2 also apply to such omission or failure.

In cases where a payment default in connection with an investment loan stems from a lack of ability or will on the part of the investment company to fulfil its obligations (a commercial event), a subsequent loss-causing event does not automatically entitle the guarantee-holder to indemnification under the guarantee. The above points do not apply if the commercial event has ceased to apply before the date for the payment of the indemnification.

In the event a state or central bank guarantee has been issued for an investment loan, any loss as a result of neither the guarantee-holder nor the guarantor fulfilling their payment obligations will be deemed to be covered by the guarantee.

Regarding 2.2 a)

The term “other similar measure” under 2.2 a) also includes discrimination concerning taxation, fees or the award of licences or regarding the supply of raw materials, input materials, and other supplies, or restrictions on the right of the guarantee-holder to exercise control over the management of the company. Discrimination can also apply to the right to export or import goods or services from and to the investment company. The introduction of a general tax of a confiscatory nature is also covered by the guarantee. In the case of goods and services that are necessary for the operation of the investment company, the guarantee also covers an administratively decided price increase of such an extent that it may be considered as having a confiscatory effect. The term “other similar measure” under 2.2 a) also includes such measures that do not constitute direct nationalisation or expropriation but which by virtue of their frequency and their effect lead to the loss described in 2.2a). This refers to what is known as creeping expropriation.

The deprivation of the guarantee-holder’s right of ownership to the investment or control over it under 2.2 a) also applies to the situation in which the guarantee-holder is prevented from selling or removing invested property in connection with the winding up of the investment. In the case of obstacles to the transfer of monetary compensation for such property, the provision of 2.2 e) is applicable instead.

Regarding 2.2 c)

The terms instability and failure under 2.2 c) mean, for example, erroneous, misleading or incomplete information from a public authority in the host country. Such information may relate to the right of ownership or usufruct in real estate or other registered assets.

2.2c) also covers erroneous information from a public authority in the host country concerning its own or any other public agency's competence or authority regarding, for example, the granting of permits.

It is assumed that when obtaining and examining the information referred to in the preceding paragraph, the guarantee-holder has exercised the care and attention that is deemed to be necessary in the circumstances.

An unjustified cancellation of a permit that is significant for the running of the company may be covered under 2.2 c). The same applies if a permit once received ceases to be valid in connection with the abolition of the public authority granting the permit.

Regarding 2.2 d)

Loss as referred to in 2.2 d) may also occur in cases when the investment has not been physically damaged or destroyed but where the intended use of the investment has been prevented for such a long time, due to the events on which the claim for indemnification is based, that all or part of the investment can thereby be considered to have been lost or that obstacles or delays have arisen in connection with the repayment to the guarantee-holder of the investment loan or interest thereon.

A blockade directed against the host country may normally be understood to be equivalent to such an event as referred to in 2.2 d).

An industrial dispute may in certain cases be deemed to be an "other extraordinary event" according to 2.2 d). It is, however, required that the dispute either has a clear political purpose or is fairly general in scope; such as a general strike. A strike confined to an individual company or group, and whose only or primary purpose is to influence the conditions at the company or group of companies, does not fall under the term "other extraordinary event." In this case, the dispute is not the result of political tensions outside the company or the group.

Acts of terrorism against employees or their families may also be considered as an "other extraordinary event" if such events take place on a large scale and the public authorities in the host country appear unable to control them.

By customary insurance is understood such property insurance as is provided by established insurance companies and which, in accordance with international business practice – taking into account the prevailing political and other conditions at the time – is normally contracted for investments in countries of the category in which the investment is made.

Regarding 2.2 e)

For a guarantee to cover the risk for an obstacle to a transfer as referred to in 2.2 e), it is required that the transfer was already intended, when the guarantee came into effect, to be made to a country other than the host country, in a currency that EKN had accepted for the purpose in question. If EKN has not accepted the currency, this is indicated by an explicit exception in the guarantee for loss caused by an event as referred to in 2.2 e).

One condition for an obstacle to a transfer as referred to in 2.2 e) to be deemed to have arisen is that the investment company or guarantee-holder has used to no avail all legal means at its disposal to obtain the agreed currency and transfer the amount in question.

Compensation and reimbursements also includes damages.

The investment company must properly deposit the amount with the bank or other institution that is engaged to effect transfer; it is therefore not enough for the investment company to have sufficient funds in an account with the bank or institution. The amount must have been transferred from such an account or have been deposited separately in a different account for transfer and there remain kept apart from the investment company's assets, on the guarantee-holder's account pending the cessation of the obstacle to transfer. These requirements do not apply, however, if the investment company is a bank. Furthermore, the deposit requirements do not apply if it is the responsibility of a public authority in the host country to make payment or arrange to have payment made in the form of compensation or income from the invested capital.

The guarantee also covers the case where - when a temporary obstacle to transfer has been removed - the transfer has been effected but was of a lower amount than has been agreed as a result of changes in the exchange rate. The investment company may thus have duly paid in an amount in local currency corresponding, at the time of the payment, to the amount to be transferred to the guarantee-holder in the agreed currency, but as a result of the transfer obstacle, the amount is not transferred until some time later. In the meantime the exchange rate of the local currency in relation to the agreed currency may have declined, resulting in the amount transferred being less than the full amount that the guarantee-holder would have received had the transfer obstacle not arisen.

If a public authority has in some other way unexpectedly prevented or delayed payment in the agreed currency, this is deemed to be equivalent to the unexpected taking of measures by a public authority that have prevented or delayed transfer as referred to in 2.2e).

2.3 Loss caused by guarantee-holder's fault or negligence etc

Loss caused by fault or negligence on the part of the guarantee-holder, a consortium partner of his, or any party acting on behalf of the guarantee-holder, is not eligible for indemnification.

Commentary

By fault or negligence is meant not only fault or negligence in the execution of the investment. It may also, for example, be a question of failure to comply with applicable legal regulations or official ordinances in the host country, or breach of a contract or other agreements with the host country in connection with the investment.

Should the guarantee-holder as a result of regulations or conditions in the host country be compelled to select or engage a consortium partner or another supplying party who he does not consider that he can supervise or control to the required degree, this must be stated in the application for a guarantee. If thereby a loss arises as a result of the fault or negligence of such consortium partner or supplying party and if there is no prospect of the guarantee-holder being able to demand compensation for the loss from the consortium partner or supplying party, EKN may accept that the loss is eligible for indemnification. This shall be indicated in the guarantee.

Cf also 5.1.2

2.4 Assertion of guarantees and other security

Should it have been stated in connection with the application for the guarantee, or if the issue of the guarantee is conditional on a third party providing surety or the like to cover a loss that may arise, the loss will only be eligible for indemnification if the third party has not fulfilled his

obligations within two months from the date when the demand for payment was submitted to him.

Should it have been stated in connection with the application, or if the issue of the guarantee is conditional upon the provision of collateral or similar security, a loss will not be deemed to have occurred until such security has been utilised and proved insufficient, or until it has been shown that there is an obstacle that is no fault of the guarantee-holder's, to the collateral being utilised. Before measures are taken to realise the aforesaid collateral, the guarantee-holder shall consult EKN.

Commentary

Security or payment guarantees shall apply as for the guarantor's own debt (guarantee with direct liability) unless EKN states otherwise.

2.5 Coming into effect of guarantee and its period of validity

The coming into effect of a guarantee at any given time means that the guarantee covers loss-causing events that may occur after that point in time. The time is stated on the guarantee. The guarantee ceases to apply on the day stated in the guarantee and does not cover loss caused by any event occurring after that day.

Commentary

Loss as a result of "creeping expropriation" (see 2.2, commentary to 2.2a) is covered by the guarantee provided that the process was initiated during the period of validity of the guarantee.

3 Circumstances that may render the guarantee invalid etc.

3.1 Lack of permits

The permits that, in accordance with the regulations in effect at the time, are required for executing the investment shall be obtained prior to the execution of the investment. Moreover, if the investment is executed in stages, it is a requirement that the guarantee-holder in connection with such execution, has not had reason to suspect that the permit in question is no longer applicable or is not adequate.

Commentary

It is incumbent on the guarantee-holder to ascertain with the due degree of care that the necessary official permits have been obtained.

3.2 The wording of the contract etc

Contracts as referred to in 2.2b) and contracts relating to investment loans shall be in writing and legally binding.

Contracts that the guarantee-holder has entered into with the host country or the investment company may not contain provisions or otherwise be so drafted as to restrict the guarantee-holder's ability to fulfil his obligations according to the guarantee and these general conditions. This applies also to guarantees, hypothecation deeds and similar documents. The fact that EKN may have seen the said contracts and such documents cannot be invoked against EKN, unless EKN has stated in writing that it does not object to the wording of the contract or such documents.

Commentary

According to 4.2 and 6.1, measures may be taken in certain cases, as a consequence of an increase in risk or in order to avoid or limit loss. The contract may therefore not contain provisions limiting the guarantee-holder's freedom of action in this regard. As is evident from 5.1.2, EKN can in certain cases demand that the guarantee-holder through the final settlement of a court or arbitration resolve disputes between the guarantee-holder and the host country or the investment company. A contract may not contain provisions that constrain the resolution of disputes. In view of the provisions in 5.1.3 that the guarantee-holder be obliged to assign his rights etc. to EKN in connection with indemnification, the contract or other documents mentioned in 3.2 may not contain provisions that prevent this.

3.3 Amendment of the contract etc

Contracts as referred to in 2.2b) as well as contracts relating to investment loans may not, without EKN's written consent, be changed from what was specified at the time of the application for a guarantee. The guarantee-holder may not cancel the contract, terminate its implementation or assign his obligations as stated in the contract to a third party without EKN's written consent. However, credit institutions may, without EKN's consent, suspend payments under a loan agreement if this is necessary for compliance with what the institutions deems to statutory requirements for a sound business.

Commentary

Regarding changes to an investment, see also 3.5, third paragraph.

3.4 Waiver of rights etc

The guarantee-holder may not, without EKN's written consent, waive all or some of his rights to the investment, renounce the right to compensation or indemnification, which may accrue to him as a result of a loss, or renounce any collateral, surety or other security that was stated in the application for the guarantee or was presented as a condition for the guarantee.

In the case of investment loans, over and above the provisions of 3.4 first paragraph, the guarantee-holder may not wholly or partially renounce the right to receivables or grant a payment respite without EKN's written consent.

Commentary

The terms compensation and indemnity also includes damages.

3.5 Effect of failure to observe the provisions in 3.1-3.4 and provision of erroneous statement etc

If the guarantee-holder has not observed the provisions of 3.1 – 3-4 and such a failure has increased EKN's risk of loss, then the indemnification payable by EKN under the guarantee shall be adjusted accordingly.

If the guarantee-holder has provided EKN with erroneous or misleading statement about the investment or about any other matter of significance in connection with the issue of the guarantee, and this has increased EKN's risk of loss, the indemnification payable by EKN under the guarantee shall be adjusted accordingly provided that the guarantee-holder realised or ought to have realised that the statement was erroneous or misleading. Should the provision of correct information have meant that EKN would not have issued the guarantee in the manner it did -

regardless of whether or not what has transpired has increased EKN's risk of loss - EKN is entitled to declare that all or part of the guarantee is not binding on EKN.

The provisions of 3.5 second paragraph apply also if the guaranteed investment, as a result of an action by the guarantee-holder, has acquired another content differing from what was originally stated by the guarantee-holder.

Commentary

In some of the cases referred to in 3.5, second and third paragraphs, EKN may declare that the guarantee is not binding, even if what has transpired has not increased EKN's risk of loss. The reason for this is that when EKN considers an application for a guarantee, it also considers other factors than those relating to risk assessment. The application is considered within a framework of rules based on the statutes governing EKN's guarantee activities, international agreements and the praxis established within EKN in various respects.

It is in the nature of things that incomplete information may also be misleading, if it relates to a matter that the guarantee-holder is required to report according to the application form.

It should be noted that in certain cases the indemnification may be reduced to zero.

3.6 Transfer of excess risk to a third party

Excess risk may not be insured or otherwise transferred to a third party without the EKN's written consent except as provided below. If the guarantee-holder contravenes this provision, the guarantee is not binding on EKN.

The guarantee-holder may transfer the excess risk to the parent company of the Group to which the guarantee-holder belongs.

In the event of the assignment of rights as provided in 3.7, the guarantee-holder may transfer the excess risk to the assignee.

In the case of an investment loan, if several banks are guarantee-holders under one and the same guarantee, then the following specific rules apply. The excess risk may be assigned to one of these banks provided that this bank's share of the loan amounts at a minimum to an amount that corresponds to the share of the excess risk under the guarantee.

Commentary

The term transfer of excess risk is equivalent to the guarantee-holder providing surety, collateral or any other security in favour of the assignee sufficient to cover the excess risk.

3.7 Assignment of rights etc

The guarantee-holder may assign his rights in connection with the investment and the guarantee to AB Svensk Exportkredit, Nordiska Investeringsbanken, a Swedish joint-stock banking company, a Swedish savings bank or a Swedish member bank, or to such bank-owned finance company as is referred to in the Act on Financing Operations. Such an assignment shall be reported to EKN in writing without delay.

Assignment to any party other than one mentioned above requires EKN'S written consent. If the guarantee-holder does not obtain such consent, EKN is entitled to declare that the guarantee is not binding on EKN.

The party to whom the rights are assigned shall not have a better right in relation to EKN than the guarantee-holder. Although the rights have been assigned, the guarantee-holder's obligations towards EKN remain unchanged.

EKN is entitled to make agreements with the assignee in matters concerning the rights assigned with binding effect also on the guarantee-holder. EKN shall, however, notify the guarantee-holder before entering into such an agreement.

The above shall also apply to the hypothecation of the guarantee or the assignment of other specific rights.

Commentary

Since the guarantee-holder's obligations to EKN remain unchanged even after an assignment of the rights under the guarantee, the guarantee-holder and the assignee are advised to agree on some practical arrangement with a view to ensuring that such obligations are not neglected; if the parties, for example, do not keep each other informed of such circumstances as those referred to in 4.1, there is a risk that the obligation to notify prescribed therein will not be observed.

According to 5.1.3 the guarantee-holder's obligations include assigning his rights etc to EKN prior to indemnification. This must also be taken into consideration in connection with the assignment of the rights associated with the investment and the guarantee.

In specific cases EKN may at the request of the guarantee-holder permit a change of guarantee-holder. Normally, in such a case, a new guarantee will be issued. It should be observed that the transfer of part of an investment loan to another lender is equivalent to a change of guarantee-holder.

3.8 Omission to pay a premium

If the premium payable for the guarantee is not paid within the prescribed time, EKN is entitled, after an additional period following the sending of a reminder to pay the premium, to declare that the guarantee is not binding on EKN.

3.9 Repayment of paid premium

In the event EKN declares the guarantee to be non-binding on EKN, EKN shall repay part of the paid premium. Over and above this, the guarantee-holder has no right to repayment of all or part of any premium paid.

Commentary

The amount of repayment permitted is the amount that corresponds to the difference between the premium paid and the premium that would have been charged for the guarantee if the guarantee only covered the period until the date on which EKN gave the notice referred to in 3.9. Of the amount so calculated, 10 per cent will be deducted to cover EKN's cost of administering the case.

A decision by EKN to adjust the indemnification claimed under the guarantee does not give rise to any repayment of the premium paid.

4. MEASURES IN CASE OF INCREASED RISK OF LOSS ETC

4.1 Obligation to notify EKN

If the guarantee-holder has become aware of any circumstance which – according to what he could reasonably have understood – has increased the risk of a loss-causing event occurring, he is obliged to notify EKN in writing without delay.

If the guarantee-holder has become aware that a loss-causing event has occurred, he shall notify this to EKN in writing without delay. Such a notification shall be submitted without awaiting the four-month and six-month periods of grace referred to in 2.2.

If the guarantee-holder fails to send in such a notification as stated in 4.1, first and second paragraphs, and this omission has increased EKN's risk of loss, the indemnification payable under the guarantee shall be adjusted accordingly.

In the case of investment loans, the following specific rules apply. If several banks are guarantee-holders under one and the same guarantee, the maximum adjustment made in accordance with 4.1, third paragraph, is the amount that corresponds to the negligent guarantee-holder's share of the highest amount of indemnification payable under the guarantee. If there is uncertainty as to who has failed to send in the notification, this restriction does not apply.

If the failure relates to a notification of non-payment under the terms of the investment loan and if such a notification has not been received within twelve months from the due date, the guarantee is not binding on EKN insofar as it relates to the non-payment, regardless of whether or not the failure has increased EKN's risk of loss.

Commentary

For the guarantee-holder's obligations, see also 6.1.

It should be observed that the notification in accordance with 4.1, second paragraph, is not considered to include an application for indemnification under the guarantee. Cf 5.1.1.

It should be observed that indemnification payable can in certain cases be reduced to zero.

4.2 Specific measures to avoid or limit loss

If such circumstances arise that in EKN's judgement have significantly increased the risk of loss in relation to the circumstances prevailing when the guarantee was issued, EKN and the guarantee-holder shall consult each other with regard to the measures which may be considered called for to avoid or limit loss, such as the interruption of an investment in progress or disbursements under the terms of the loan agreement, or utilising available opportunities for repatriation of invested capital.

Should agreement be reached on the measures called for and the guarantee-holder or EKN incur costs as a result of such a measure, the cost shall be shared by the guarantee-holder and EKN so that the guarantee-holder is liable for the excess risk part and EKN for the part that corresponds to the guarantee percentage.

In the event that EKN and the guarantee-holder are not able to reach agreement on what measures are called for, or if the guarantee-holder refrains from consultation, the following applies:

For investments other than investment loans

The guarantee-holder has sole decision-making rights, and is liable for costs incurred as a result of the measures decided upon. If the measures decided upon by the guarantee-holder have increased EKN's risk of loss, the amount of indemnification payable under the guarantee shall be adjusted accordingly.

For investment loans

EKN has sole decision-making rights, and is liable for costs incurred as a result of the measures decided upon.

The guarantee-holder, when so requested by EKN, is obliged to authorise EKN to take the measures decided upon. EKN also has the right to demand that the guarantee-holder take the measures decided upon. Should the guarantee-holder incur costs as a result of the measures agreed, this cost shall be indemnified in the proportions indicated in 4.2, second paragraph.

If the guarantee-holder fails to comply with the request as stated here, the guarantee is no longer binding on EKN.

Commentary

The term cost, according to 4.2, second paragraph, does not include administrative costs and other additional internal costs.

Failure to take measures is the equivalent of the measures referred to in 4.2, last paragraph.

EKN's obligation to indemnify the guarantee-holder for costs naturally lapses – and the guarantee-holder is obliged to repay what he may have received – if it subsequently emerges that the loss that the measure was intended to avoid or limit was not eligible for indemnification under the guarantee because the guarantee-holder has failed in his obligations under the conditions for the guarantee.

It is evident from 6.1 that the guarantee-holder has a general obligation to take measures to avoid or limit loss.

It should be noted that indemnification can in certain cases be reduced to zero.

5. INDEMNIFICATION ETC

5.1 Basic provisions

5.1.1. Request for indemnification

Request for indemnification under the guarantee shall be made in writing, with the reasons for the request stated in detail. The request shall have reached EKN within two years from the time of the loss-causing event. The guarantee-holder loses his right to indemnification if the request does not reach EKN within the stated time limit.

Commentary

The time limit of two years is counted from the time the loss-causing event occurred without regard for the time periods referred to in 2.2 and 2.4.

Please note the time limit in 4.1 for notifying an increased risk of loss or notifying that a loss-causing event has occurred. It should further be observed that the notifying according to 4.1 is not deemed to include the request for indemnification under the guarantee.

5.1.2 Objections from the host country or the investing company

In those cases where the guarantee-holder has a claim for compensation from the host country or the investing company, he is obliged to notify EKN when submitting the request for indemnification that the claim has been disputed on the grounds that the guarantee-holder, his consortium partner, or any party acting on the guarantee-holder's behalf is liable for a fault or failure or in some other way has not fulfilled his obligations as an investor. In the case of an investment loan, the guarantee-holder is also obliged to notify EKN if the debtor, for some other reason than those stated above, has disputed the guarantee-holder's claim.

In cases referred to in 5.1.2, first paragraph, the guarantee-holder shall – except when the claims are manifestly baseless – arrange for an investigation that demonstrates the existence of an eligible loss. An investigation shall normally consist of a court or arbitration decision that has come into effect.

Commentary

With reference to fault or failure, see 2.3.

It should be observed that the guarantee-holder's obligation under 5.1.2, first paragraph, applies until the time of indemnification.

If there is any doubt that a court or arbitration decision can be expected to be made after impartial proceedings or without an unreasonable waste of time, the guarantee-holder should consult EKN on another acceptable investigation.

5.1.3 Assignment to EKN of the guarantee-holder's rights

In the case of investments other than the investment loan the following applies.

Prior to receiving indemnification as a consequence of an event as referred to in 2.2 a) – d), the guarantee-holder is obliged to assign to EKN his rights to remuneration or compensation which he or she may be entitled to as a result of the loss occurred, as well as surety, pledge or any other security which may have been provided in connection with the investment. The guarantee-holder shall, moreover, if requested by EKN, assign its right to the guaranteed investment or, where appropriate, the part of the guaranteed investment that may be the subject of indemnification. Prior to payment of indemnification as a consequence of an event as referred to in 2.2 e), the guarantee-holder shall assign to EKN the right to the amount whose transfer has been obstructed or delayed.

In the case of investment loans the following applies.

Prior to receiving indemnification, the guarantee-holder is obliged to assign to EKN outstanding claims in addition to related securities and any potential claims for damages.

Commentary

Compensation or indemnity also includes damages.

5.1.4 Payment of indemnification

When EKN has reached a decision on indemnification under the guarantee, such indemnification shall be paid without delay. Interest on the indemnification amount shall accrue from the date which falls 30 days after the guarantee-holder has submitted a request for indemnification and submitted an investigation that confirms his right to indemnification under the guarantee, but no earlier than 30 days after the time periods stated in 2.2 and 2.4 respectively. The investigation shall also indicate the amount of the loss incurred.

In the case of investment loans, it must be noted that EKN is not obliged to pay out indemnification at a rate faster than that observed for the regular due dates stated in the loan agreement, to which should be added the four-month period stipulated in 2.2d) final paragraph and 2.2e) final paragraph.

Once EKN's obligation to pay indemnification has been established EKN may, at the request of the guarantee-holder, agree to pay indemnification of a given amount, although the exact amount of the indemnification has not yet been fully determined. Should more indemnification have been paid than EKN turns out to be obliged to pay based on the final calculations, the guarantee-holder shall immediately repay the difference together with interest thereon.

Commentary

5.1.4, second paragraph, stipulates that if the guarantee-holder – by taking advantage of the acceleration clause in the loan agreement – has demanded payment from the debtor in advance, this does not entitle him or her to indemnification payment at an earlier period than that which should have applied. As regards the obligation to consult when applying the acceleration clause, see the third paragraph in the commentary on 6.1.

Should EKN agree to indemnification even though the amount has not yet been fully determined, EKN may require that the guarantee-holder provide collateral for the repayment that may become payable.

Interest as stated in 5.1.4 shall be the prevailing market rate at the time in question.

5.1.5 Deduction of recovered amounts in connection with investment loans

If the guarantee-holder has other loan receivables from the debtor in addition to the investment loan guaranteed by EKN, the following applies between EKN and the guarantee-holder.

All amounts paid by the debtor to the guarantee-holder, regardless of whether or not they relate to the investment loan guarantee, shall be deducted in the order in which the claims fall due. If the guarantee-holder is a bank, or if a bank, according to 3.7, has taken over the rights under the loan agreement or the guarantee, then the deduction is made in accordance with generally accepted banking practice.

However, amounts received which, regardless of what the debtor or the guarantee-holder report, may, on objective grounds, be judged to relate to a specific claim, such as

- amounts that are paid by a guarantor or other third party with a payment liability,

- amounts that are received from the realisation of collateral or similar security,
 - amounts that come from the settlement of a bankruptcy and which relate to a specific stated claim,
 - amounts that are payment of a claim that is based on a court decision that has acquired legal effect or arbitration that is the result of an impartial process,
 - amounts that are payment for a claim stated in a debt rescheduling/ consolidation agreement,
- shall be deducted against the receivable to which the amount can thus be attributed.

To the extent not otherwise ensuing from the provisions of 5.1.5, third paragraph, incoming amounts are deducted in the first instance against default interest, then against other interest, and finally against the capital receivable.

The provisions of 5.1.5 apply both before and after indemnification.

Commentary

In the first instance amounts shall be deducted in accordance with 5.1.5, second and third paragraphs. Thereafter, the provisions of 5.1.5, fourth paragraph, shall apply.

5.2 Calculation of loss

5.2.1 Loss according to 2.2 a) – d)

A loss incurred is calculated in the following way.

In the case of investments other than investment loans

A loss eligible for indemnification, unless EKN announces otherwise, shall not be regarded as having been incurred before measures have been taken to repatriate the investment, or the return on or compensation for the investment.

The loss shall then be deemed to be the difference between

on the one hand

- the value of the investment

and, on the other hand

- the return or the compensation that the guarantee-holder may have received as a consequence of the loss,
- the amount received from the assertion of collateral,
- any counter claim that can be successfully raised by the host country, the investment company or the guarantor, and
- the guarantee-holder's share of the investment's residual value in cases where the investment has been partially lost or in cases of damage to the investment company's property.

The value and residual value of the investment shall be determined on the basis of the market value of the investment at the time when the loss-causing event occurred. If no market value can be placed on the investment because of conditions in the host country, the value and the residual value of the investment shall be determined in another acceptable manner.

If the guarantee-holder has made other investments in the investment company in addition to the investment covered by EKN, the amount on which indemnification is to be based is to be calculated according to the relation between the value of the guaranteed investment and the value of the guarantee-holder's total investment in the company at the time the loss occurred.

In the case of investment loans

The loss consists of the capital amount that has fallen due for payment together with interest, from which shall be deducted amounts received in from the assertion of collateral, other compensation received by the guarantee-holder and any counter claim that can be successfully raised by the host country, the debtor or the guarantor. The guarantee does not cover default interest.

Commentary

The value and residual value of the investment are determined taking into account the guarantee-holder's interest in the investment company when the loss-causing event occurred.

In the application of 5.2.1 the loss-causing event shall be deemed to have occurred without consideration of the time periods referred to in 2.2 and 2.4.

The terms remuneration and compensation also covers damages.

Deductions will be made not only of amounts received from the assertion of the collateral deemed necessary when the guarantee was issued, but also in respect of other collateral that the guarantee-holder may have received.

Regarding the guarantee-holder's disclosure and reporting obligations, see 6.2.

Regarding the use of an acceleration clause in connection with an investment loan, see 5.1.4 Commentary first paragraph and regarding the duty to consult, see 6.1 Commentary third paragraph.

Regarding deduction between EKN and the guarantee-holder in connection with guarantees for investment loans, see 5.1.5.

5.2.2 Loss according to 2.2 e)

A loss incurred consists of the amount whose transfer was prevented, normally the amount paid in to (deposited) the bank or other institution in the host country that has been engaged to make the transfer, from which amounts received from the assertion of collateral are then deducted.

If the guarantee-holder has made other investments in the investment company in addition to the investment covered by EKN, the amount on which indemnification is to be based is calculated on the basis of the relationship between the value of the guaranteed investment and the value of all the guarantee-holder's investments in the company at the time the claim arose. In the case of investment loans, the provisions of 5.1.5 apply.

Commentary

Regarding deposit of amount, see 2.2, Commentary under 2.24).

5.2.3 Costs not eligible for indemnification of loss

The loss does not include

- * costs that the guarantee-holder has incurred on proving that EKN is obliged to pay indemnification,
- * costs that the guarantee-holder has incurred in connection with the submission of his demands,
- * costs that the guarantee-holder has incurred in connection with the assertion of security.

Commentary

The points stated in 5.2.3 first point do not imply any restriction on EKN's obligation to indemnify such costs as EKN may become obliged to pay as the result of arbitration on the basis of 7.2.

It is explained in 4.2, 6.1 and 5.4 that EKN is in some cases liable to pay some of the costs that may be associated with the submission of demands or the assertion of collateral. It is evident from the commentary on these conditions that administrative costs and other additional internal costs are not included in such costs.

5.2.4 Conversion of foreign currency

In case where investments are made in Swedish kronor indemnification is also paid out in Swedish kronor. If the investment is made entirely or partly in foreign currency, the guarantee states if indemnification is to be paid out in the foreign currency and if so the maximum amount of loss that will be indemnified in this currency. In other cases, indemnification is determined by converting the amount into Swedish kronor at an average of the buying prices for the foreign currency used by two of Sweden's largest commercial banks at around 11.00 am in Stockholm on the day the loss was incurred.

Commentary

In the application of 5.2.4 a loss shall be deemed to have been incurred when the loss-causing event occurred – in the case of an investment loan, the maturity date of the receivable – not taking into account the periods of time referred to in 2.2 and 2.4.

Should there be no buying rate as referred to in 5.2.4 on the day the loss was incurred, the calculation is instead made using the buying rate that in the judgement of the Swedish Bankers' Association best reflects the value of the currency.

5.3 Maximum amount of indemnification and maximum amount of loss

The maximum indemnification payable under the guarantee corresponds to the percentage share of the maximum amount of loss stated in the guarantee. The maximum amount of loss can be reduced in the manner prescribed in the guarantee. Over and above this, the amount may be reduced at the request of the guarantee-holder.

Notwithstanding the provisions of 5.3 first paragraph, EKN may be liable for costs as laid down in 4.2, 5.4 and 6.1.

The extent of the guarantee for income from the investment in the case of investments other than investment loans is indicated in the guarantee.

The reinvestment of profits that cannot be repatriated from the host country in the form of dividend is not covered by the guarantee without EKN's written consent.

Commentary

The highest amount of loss may be written down as a result of, for example, the repatriation of invested capital or compensation or income therefrom. In certain cases, the amount may be written down on the basis of a plan provided in the guarantee, when, for example, investment loans are amortised.

When invested capital or compensation or income therefrom is being repatriated in cases where the guarantee-holder has made other investments in the investment company, over and above the investment covered by EKN, the write-down is calculated taking into account the relation between the value of the guaranteed investment and the value of all the guarantee-holder's investments in the investment company at the time of the loss.

5.4 Measures to be taken after indemnification

5.4.1 Basic provisions

EKN and the guarantee-holder shall consult each other on what measures are to be taken to safeguard EKN's and the guarantee-holder's interests. In the event that EKN and the guarantee-holder agree on the measures to be taken, the provisions of 5.4.2 apply. Otherwise, the provisions of 5.4.3 apply.

Regardless of whether EKN and the guarantee-holder agree about the measures, the guarantee-holder is obliged to assist in safeguarding rights to payment or compensation caused by the loss and the right to surety, collateral or other security that may exist, and to assist with other measures for recovery. It is also incumbent on the guarantee-holder to participate to the extent that can reasonably be required in changing or bringing to an end the situation that gave rise to the indemnification.

5.4.2 In the situation where EKN and the guarantee-holder are in agreement

If the measures involve costs, these are to be shared by the guarantee-holder and EKN in such a way that the guarantee-holder accepts liability for the excess risk and EKN for the portion that corresponds to the percentage rate in the guarantee. If measures are taken by the guarantee-holder and if these measures involve the guarantee-holder in costs that are not insignificant, EKN shall, should the guarantee-holder so request, advance an amount corresponding to EKN's share of the estimated cost.

Payment or compensation received after indemnification as well as amounts received after indemnification from the assertion of collateral or other measures to promote recovery shall – once EKN's and the guarantee-holder's costs have been covered – be shared between EKN and the guarantee-holder in such a way that EKN shall receive an amount corresponding to the applicable percentage rate in the guarantee and the guarantee-holder an amount corresponding to the excess risk. However, EKN shall not receive more than corresponds to the amount of indemnification paid out by EKN plus interest thereon.

In cases where the guarantee-holder has invested other capital, over and above the invested capital covered by EKN, in the investment company, the amount received shall – before the distribution as set out above – be deducted between EKN and the guarantee-holder in proportion to the relation between the value of the guaranteed invested capital and the value of all the guarantee-holder's investments in the company at the time of the loss. In the case of investment loans, the provision of 5.1.5 shall apply to the deduction of amounts received.

Commentary

The term costs in 5.4.2 does not include administrative costs and other additional internal costs.

The terms payment and compensation also include damages.

Interest as referred to in 5.4.2, second paragraph, is the market rate of interest applicable at the time in question.

5.4.3 In the situation where EKN and the guarantee-holder are not in agreement

If EKN and the guarantee-holder fail to agree on measures to be taken or the guarantee-holder refrains from consultations, EKN has a unilateral decision-making right, while taking reasonable account of the guarantee-holder's interests.

EKN alone is liable for the costs arising out of EKN's decisions. The guarantee-holder has no right to amounts received before EKN has fully recovered these costs or to the compensation paid out under the guarantee plus interest thereon.

If a measure decided upon by EKN requires the participation of the guarantee-holder, and the guarantee-holder is thereby involved in costs, these costs shall be reimbursed by EKN in accordance with the principles laid out in 5.4.2, first paragraph.

Commentary

It should be noted that if any measure decided upon by EKN requires the participation of the guarantee-holder, it is incumbent on the latter also to participate in such cases as are referred to here. This follows from 5.4.1, second paragraph.

The term costs in 5.4.3 does not include administrative costs and other additional internal costs.

Interest as referred to in 5.4.3, second paragraph shall be the market rate of interest applicable at the time.

6. CERTAIN GENERAL OBLIGATIONS ON THE GUARANTEE-HOLDER ETC

6.1 Measures for limiting loss etc

The guarantee-holder is obliged to take all such measures and also in other respects to act in such a manner as may reasonably be deemed incumbent upon him to avoid or limit loss. In case of doubt as to the appropriateness of a certain measure, the guarantee-holder should consult EKN before taking the measure.

Should the guarantee-holder fail to fulfil the obligations stated in the above paragraph or act in contravention of a recommendation by EKN and should the guarantee-holder thereby have

increased EKN's risk of loss, the amount of indemnification payable under the guarantee shall be accordingly adjusted.

Should such a measure as referred to in the first paragraph entail specific costs, EKN may agree to defray some of these costs at the request of the guarantee-holder.

Commentary

Point 6.1 lays down rules of conduct of a general nature for the guarantee-holder, who is expected to take the same care and attention as if he had no guarantee.

The guarantee-holder's obligation to take measures assumes that he monitors closely the investments made and the risk of loss therewith associated.

As an example of a case where it may be doubtful whether a certain measure should be taken or not - and where consultation with EKN should consequently be held - can be mentioned the taking of legal action, and, in the case of investment loans, demands for advance repayment of outstanding receivables.

If EKN has undertaken to accept liability for the part of the cost, EKN's share normally corresponds to the percentage rate applicable to the guarantee. EKN naturally has no liability – and the guarantee-holder is obliged to repay any payments he may have received – if it emerges that the loss that the measure was intended to prevent or limit is not eligible for compensation under the guarantee as a result of the guarantee-holder having failed to fulfil his obligations under the terms of the guarantee or for any other reason.

The term costs in 6.1 does not include administrative costs and other additional internal costs.

It should be noted that in some cases, amounts can be reduced to zero.

6.2 Accounting and disclosure requirement

It is incumbent on the guarantee-holder upon request to provide EKN with such information pertaining to the investment company and the investment as is available to him or that he can obtain and that EKN deems to be of importance for the guarantee, EKN's obligation to pay indemnification or the safeguarding of EKN's rights after indemnification.

The guarantee-holder is also obliged to keep such accounting records as clearly provide the information required for determining the size of the loss incurred. The guarantee-holder shall, when so requested, also provide EKN or an expert engaged by EKN with its accounts and other records that relate to the guaranteed investment.

6.3 Authorisation for EKN to enter into debt rescheduling/consolidation agreements etc

In the case of a guaranteed investment, the guarantee-holder is obliged to co-operate in the measures required to execute a debt rescheduling/consolidation agreement. The guarantee-holder thereby authorises the Swedish government and/or EKN to enter into such agreements. The signing of a debt rescheduling/consolidation agreement does not involve any restriction in EKN's liability to pay indemnification under the guarantee.

Commentary

The mandate to enter into a debt rescheduling/consolidation agreement covers the whole of the guaranteed investment, and thus also covers the guarantee-holder's excess risk share.

In the event of a remission of a claim, EKN is prepared, provided that all the guarantee-holders whose investments and claims are covered by the debt rescheduling/consolidation agreement so wish, to take over the guarantee-holder's excess risk share. The price for doing this is then determined by EKN using the procedures EKN normally applies to the valuation of claims. If the remission has been unilaterally decided by the Swedish government or EKN in bilateral negotiations on debt rescheduling/consolidation and is not the outcome of a multilateral agreement, EKN shall, however, take over the guarantee-holder's excess risk in the prescribed manner at the request of the guarantee-holder.

Before multilateral or bilateral debt rescheduling/consolidation negotiations relating to a guaranteed investment are opened, the guarantee-holder will be informed that such negotiations are to take place.

6.4 The guarantee-holder's liability to pay damages in certain cases

The guarantee-holder is obliged to indemnify EKN for costs and losses that may have been caused by fraudulent or negligent behaviour on his part or by his failure to fulfil his obligations under the terms of the guarantee.

However, this obligation is limited – except when the guarantee-holder has acted fraudulently or showed gross negligence – to the amount that the guarantee-holder received in indemnification plus any costs incurred by EKN as provided in 4.2, 5.4 and 6.1 plus interest thereon.

Commentary

Interest as referred to in 6.4, final paragraph, shall be the market rate of interest in effect at the time.

7 DISPUTES RELATING TO GUARANTEE

7.1 Applicable law

The guarantee is governed by Swedish law.

7.2 Arbitration

Any disputes relating to the guarantee shall be settled by arbitrators in accordance with the Swedish Law in effect at the time when the dispute occurs.

The arbitration procedures shall take place in Stockholm.

Should the guarantee-holder wish to refer a decision announced by EKN to arbitration, he shall file such a request no later than twelve months after having been served the decision. If he fails to do so, he shall forfeit his right of action.

Should the arbitrators arrive at different decisions on a valuation, the average value shall be deemed to be the decision of the arbitrators.