

Insurance Rule 26 of 2008

Export Credit Insurance

Rule pursuant to article 5 of the Act

1. (1) This Insurance Rule on export credit insurance (“this Rule”) is made by the Authority for the implementation of Malta’s international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, pursuant to, and for the purposes of, article 5 of the Act.

(2) This Rule shall come into force on the 1st February 2008.

Applications

2. (1) This Rule applies to any company controlled by the Government of Malta authorised to carry on the business of export credit insurance in class 14, Part I of the Third Schedule to the Act and any company or institution controlled by, or operating for the account or with the support of, or representing the government or controlled by and/or acting under the authority of the government providing such insurance cover, when destined for countries outside the Community and financed by buyer credit or supplier credit or paid on cash terms (‘the insurer’).

Scope

3. (1) The scope of this Rule is to implement the provisions of -

(a) Council Decision of 10 December 1982 on the rules applicable, in the fields of export guarantees and finance for export, to certain subcontracts with parties in other Member States of the European Communities or on non-member countries;

(b) Council Rule 84/568/EEC of 27 November 1984 concerning the reciprocal obligations of export credit insurance organisations of the Member States acting on behalf of the State or with its support, or of public departments in place of such organisations, in the case of joint guarantees for a contract involving one or more subcontracts in one or more Member States of the European Communities; and

(c) Council Rule 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long term cover.

Definitions

4. In this Rule unless the context otherwise requires –

“buyer credit transaction” means a loan agreement between one or more financial institutions and one or more borrowers or buyers financing a commercial contract providing for the export of goods and/or the provision of services from Malta, whereby the lending financial institutions undertake to pay the suppliers on cash terms on behalf of the borrowers or buyers, while the borrowers or buyers will reimburse the lending financial institutions on credit terms;

“claim waiting period” means that period of time which shall be calculated in accordance with paragraph 12 of the First Schedule to this Rule at the end of which the policyholder shall be entitled to indemnification from the insurer;

“companies controlled by the government” means those companies controlled by the Government of Malta or operating for the account or with the support of or representing the Government of Malta, and, for the purpose of this Rule, this shall include any government department or agency;

“debtor” means, in the insured transaction in each case, the buyer or borrower (public or private as the case may be) in a buyer credit transaction or his guarantor, if any, or the buyer (public or private as the case may be) in a supplier credit transaction or his guarantor, if any;

“EEA State” means a State which is contracting party to the agreement on the European Economic Area signed at Oporto of 2 May, 1992, as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended from time to time;

“global credit arrangement” means any understanding, agreement or other arrangement of whatever form, whereby the intention to guarantee supplier or financial credits or to open financial credits up to a specified or ascertainable ceiling and in respect of a connected series of transactions, is made known to a third country or to exporters or to financial institutions;

“long term cover” means a transaction involving a total risk period (that is repayment period including manufacturing period) of more than five years;

“medium term cover” means a transaction involving a total risk period (that is repayment period including manufacturing period) of two to five years;

“Member State” means a Member State of the European Community;

“short term cover” means a transaction involving a total risk period (that is repayment period including manufacturing period) of less than two years;

“subcontract” means a contract concluded by an undertaking, being the principal contractor with another undertaking, being the subcontractor under which it is agreed that, in the performance of a contract made between the principal contractor and a third party buyer, the subcontractor will deliver goods or perform services which the principal contractor must incorporate or use in supplying the goods or services which the third party buyer has ordered from him;

“supplier credit transaction” or “contract” means a contract providing for export of goods and/or provision of services originating in Malta between one or more suppliers and one or more buyers whereby the buyer(s) undertakes to pay the supplier(s) on cash terms or on credit terms;

“third country” means a state other than Malta and which is not a Member State or an EEA State ;

“total outstanding exposure” means the exposure of the transaction to risk determined on the basis of the amounts for medium and long-term business within the limits of the percentage of cover established by this Rule;

“undertakings established in Malta or in any Member State or EEA State” means companies or firms constituted under laws of Malta or of any Member State or EEA State, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit making, having their registered office, central administration or principal place of business in Malta or in any Member State or EEA State.

Provisions applicable to export credit insurance

5. (1) The provisions -

(a) determining the terms, conditions, notification of obligations and procedures relating to export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto; and

(b) containing the rules applicable in the fields of export guarantees and finance for export to certain sub-contracts with parties in other Member States or on non-member countries of insurers if deciding to grant jointly, with another insurer or insurers, guarantees relating to a contract involving one or more subcontracts in one or more Member States or EEA States,

are those determined in the First Schedule to this Rule.

(2) The provisions concerning the reciprocal obligations of export credit insurance organisations of the Member States acting on behalf of the State or with its support, in the case of joint guarantees for a contract involving one or more Member States or EEA State are those determined in the Second Schedule to this Rule.

Repeals and Savings

6. (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 26 of 2005 – Export Credit Insurance, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order whatsoever were taken or commenced under this Rule.

FIRST SCHEDULE

Provisions for Export Credit Insurance for Transactions with Medium and Long Term Cover

1. (1) The provisions laid down in this Schedule shall apply to:

(a) export credit insurance cover granted by one insurer or by one or more authorised insurers together with one or more insurers established in a Member State or EEA State for transactions related to the export of goods or the provision of services from Malta with a medium or long term cover.

(b) export credit insurance covering all risks mentioned in paragraphs 5 and 11 of this Schedule. However, the insurer shall be entitled to limit the export insurance cover to particular risks only.

(c) the principles applicable to public debtors when the obligations of a private debtor are wholly and unconditionally guaranteed by an entity which is considered public, in accordance with the definition of public debtor in sub-paragraph (1) of paragraph 4 of this Schedule.

(2) This Schedule shall not apply to –

(a) export credit insurance for transactions with short term cover;

(b) *bonds*, advance payment *bonds*, performance and retention bonds;

(c) risks relating to construction equipment and material used in Malta for the performance of the commercial contract.

Characteristics of supplier credit

2. (a) The provisions regulating supplier credit transactions in this Schedule shall apply to export credit insurance covering supplier credit transactions where cover is given to undertakings established in Malta or in any Member State or EEA State.

(b) In the case that a commercial contract is financed by a buyer credit transaction or any other financing arrangement, the cover given by an export credit insurance contract to the supplier for the risks underlying the commercial contract shall be regulated by the provisions relating to export credit insurance contracts covering supplier credits.

Characteristics of buyer credit

3. (a) The provisions regulating buyer credit transactions in this Schedule shall apply to export credit insurance contracts covering financial institutions irrespective of the place of establishment or registration of the financial institution provided that under the buyer credit transaction, the borrower/buyer is unconditionally obliged to repay the lending financial institution, irrespective of the performance of the commercial contract financed by the financial institution.

(b) The provisions regulating buyer credit transactions shall also apply to export credit insurance contracts covering financial institutions in respect of which negotiable instruments are held by financial institutions and payable by a borrower/buyer pursuant to an arrangement for the financing of a commercial contract.

Status of the debtor

4. (1) The debtor can be a public or a private debtor, and for the purposes of this Rule:

(a) “private debtor” shall be any debtor which is not a public debtor;

(b) “public debtor” shall be any entity which, in whatever form, represents the public authority itself and which cannot, either judicially or administratively be declared insolvent being it a ministry, the central bank or any other public entity such as a government department or any other governmental, national, regional or local authority or institution and any organisation which is administered or created by any such authority; and any debtor which is not public, according to the aforementioned criteria, shall be, in principle, considered as private.

(2) An insurer shall in assessing whether the debtor is a public or a private debtor take into account:

- (a) the legal status of the debtor;
- (b) the real effectiveness of any legal action against the debtor;
- (c) the debtor's sources of finance and revenue; this shall take account of the fact that a public debtor may also discharge his debts by using sources which are not related to central government funds, for example through revenues raised by local taxation, or by providing public services,
- (d) the degree of influence and control over the debtor that can be exercised by the government of the country where the goods are being supplied or wherein the service is being provided by the creditor (exporter or bank).

Covered risk

5. (1) An export credit insurance contract shall cover the risk of loss arising from manufacturing and the risk arising from credit risk.

(2) The loss arising from manufacturing risk materialises when the performance of the contractual obligations of the policyholder are, or the manufacture of the goods ordered is, suspended for a period of six consecutive months:

Provided that, such suspension is caused directly and exclusively by the occurrence of one or more of the causes mentioned in paragraph 11 of this Schedule.

(3) The loss arising from credit risk materialises when the policyholder is unable to obtain payment of any amount due to it under the contract or loan agreement, as the case may be, after the lapse of a period of three months from the date on which such payments are due:

Provided that, such non-payment is caused directly and exclusively by the occurrence of one or more of the causes mentioned in paragraph 11 of this Schedule.

(4) Where the risk related to a buyer credit is guaranteed unconditionally, the insurer shall follow the principles and procedures laid down in paragraphs 19 and sub-paragraph (1) of paragraph 28 of this Schedule.

Extent of cover

6. (1) The cover for manufacturing risk shall include, within the limit of the contract amount, the costs incurred by the policyholder either in performing its contractual obligations or in manufacturing the goods subject to the contract, provided that such costs are properly attributable to the performance of the contract.

(2) Cover for the manufacturing risk shall not include –

(a) the costs incurred by the policyholder in respect of goods and/or services already covered by the credit risk cover;

(b) amounts paid by the policyholder following the calling upon of a bond issued in respect of the covered contract;

(c) amounts paid by the policyholder to the debtor by way of damages and penalties.

(3) The cover for credit risk shall include the principal amount and interest owed by the buyer under the contract and by the borrower under a loan agreement, including interest accruing after the due date (post-maturity interest).

(4) The cover for credit risk shall not include amounts paid by the policyholder to the debtor by way of damages and penalties.

Percentage of cover

7. (1) The insurer shall expressly lay down the percentage cover and the basis for determining the maximum amount of indemnity for which it may be held liable under the export credit insurance policy.

(2) If an insurer gives a cover percentage higher than 95 per centum it shall follow the principles and procedures laid down in paragraphs 19 and sub-paragraph (1) of paragraph 28 of this Schedule.

(3) Without prejudice to sub-paragraph (2) of this paragraph, the policyholder shall retain for its own account any uninsured percentage. The insurer may, however, decide to allow the policyholder to partially or wholly exclude such uninsured percentage.

Cover for transactions in foreign currency

8. If the buyer credit or supplier credit transaction provides for payment or financing in one or more foreign currencies, an insurer may provide cover in any such currency.

Inclusion of subcontracts

9. Those subcontracts granted by the policyholder to parties in Malta and /or in one or more Member States or EEA States shall be automatically included in the export credit insurance cover entered by the policyholder with the insurer in accordance with sub-paragraph (2) paragraph 24 of this Schedule.

Effective date of cover

10. (1) In the case of a buyer credit transaction, cover shall take effect on the date of entry into force of the loan agreement.

(2) In the case of a supplier credit transaction –

(a) cover of the manufacturing risk shall take effect on the date of entry into force of the commercial contract;

(b) cover of the credit risk shall take effect on the date on which full completion of the contractual obligations of the policyholder entitles the supplier to payment:

Provided that, in the cases mentioned in sub-paragraphs (1) and (2) of this paragraph, the cover shall not take effect if the policyholder fails to observe the precedent conditions stipulated in the export credit insurance policy or in the loan agreement or contract, as the case may be.

(3) In the case that, under the terms of the contract, the policyholder is entitled to payments corresponding to the goods or services delivered or dispatched, the cover of credit risk shall take effect on the date of each partial delivery or partial dispatch.

Causes of loss and liability of the insurer

11. (1) The insurer shall be liable to indemnify the policyholder if the loss suffered by the policyholder is directly and exclusively attributable to one or more of the following causes of loss:

(a) de jure or de facto insolvency of the private debtor and of its guarantor (if any);

(b) default of the debtor and of its guarantor (if any);

(c) arbitrary repudiation or refusal of a supplier credit transaction by the buyer to interrupt or cancel the commercial contract and/or the refusal to accept goods and/or services without being entitled to do so;

(d) any decision or measure of the government of a country, other than the country of the insurer, or the country of the policyholder, including measures and decisions of public authorities which are deemed to constitute government interventions, which prevents performance of the loan agreement or the commercial contract respectively;

(e) general moratorium decreed by the government of the country of the debtor or that of a third country through which payment in respect of the loan agreement or the commercial contract is to be effected;

(f) political events, economic difficulties, legislative or administrative measures which occur or are taken in a country other than that of the insurer which prevent or delay the transfer of funds paid in respect of a loan or contract;

(g) legal provisions adopted in the debtor's country declaring payments made by the debtor in the currency used in such country to be valid discharge of the debt notwithstanding that, as a result of fluctuations in exchange rates, such payments, when converted into the currency of the commercial contract or of the loan agreement, do not cover the amount of the debt at the date of transfer of the funds ;

(h) any decision or measure of the government of a country of the insurer or of the policyholder, including measures or decisions of the European Community relating to trade between a Member State or EEA State and third countries, such as a ban on exports, in

so far as the effects of such measure or decision are not otherwise covered by the government concerned;

(i) cases of force majeure occurring in any country other than the insurer's country, unless otherwise insured.

(2) The causes of loss mentioned in indents (a) to (c) in sub-paragraph (1) of this paragraph shall be considered commercial risks for private debtors;

(3) The causes of loss mentioned in indents (d) to (i) in sub-paragraph (1) of this paragraph shall be considered political risks for private debtors and those mentioned in indents (b) to (i) shall be considered political risks for public debtors.

(4) The insurer shall be entitled to decline liability for any loss that is directly or indirectly attributable to the following:

(a) any action or omission by the policyholder or by any person acting on behalf of the policyholder;

(b) any provisions included in the contract or loan agreement or in any document forming part of or in any other way associated to such contract or loan agreement or any document including any document relating to the guarantee or security arrangements involved restricting the rights of the policyholder;

(c) any additional agreement entered between the policyholder and the debtor following the conclusion of the commercial contract or the loan agreement which has the effect of preventing or delaying payment of the debt;

(d) in the case of a supplier credit transaction, any failure of a subcontractor or co-contractor or other suppliers to perform their obligations, unless such failure is a consequence of a political event as described in indents (d) to (i) under sub-paragraph (1) of this paragraph.

Claim waiting period

12. (1) The claim waiting period shall correspond to the time set for the covered risk to materialise in accordance with sub-paragraphs (2) and (3) of paragraph 5 of this Schedule.

(2) No claim-waiting period shall apply in the case of :

(a) a private debtor, when non-payment is due to the debtor's de jure or de facto insolvency;

(b) any bilateral intergovernmental debt restructuring agreement.

Indemnification

13. (1) The policyholder shall be entitled to indemnification from the insurer at the end of the claim waiting period as defined in paragraph 12 of this Schedule, provided that, the claim is legally valid and the policyholder has managed the risk with due diligence.

(2) Following such indemnification, the insurer shall be entitled to be subrogated in the policyholder's rights under the loan agreement or commercial contract, as the case may be.

Calculation of the claim

14. (1) Without prejudice to paragraph 18 of this Schedule, the insurer shall, in calculating the payment of the claim not pay to the policyholder an amount exceeding the actual amount of its total loss, and/or exceeding the amount which the policyholder was actually entitled to receive from the borrower under the loan agreement or from the buyer under the commercial contract, respectively.

Payment of the claim

15. (1) The insurer shall pay the claim without delay and not later than one month from the end of the claim waiting period, provided that it is promptly notified of the occurrence of the claim and it has received all necessary information, documentation and evidence in order to establish the validity of the claim in good time.

(2) In the case of manufacturing risks, the claim shall be paid either within one month from the end of the claim waiting period or, where applicable, within one month of the date of receipt of an expert's report or within one month from the date of an agreement by the policyholder and the insurer as to the amount of the claim, whichever is later.

(3) If the indemnification applied for by the policyholder relates to rights which are subject to a dispute, the insurer may defer payment until the dispute is settled in favour of the policyholder.

Secured obligations

16. (1) The policyholder shall be under the obligation to ensure the validity and enforceability of any guarantee or other security securing the obligations which the debtor owes to the policyholder and shall enforce any such guarantee or other security.

(2) The export credit insurance policy shall stipulate the measures which a policyholder should take to secure the validity, enforceability and to enforce the guarantee or security.

Bilateral intergovernmental debt restructuring agreement

17. (1) If the covered loan agreement or commercial contract is subject to a bilateral intergovernmental debt restructuring agreement, the policyholder shall follow the conditions of the restructuring agreement in respect of both the insured and uninsured portions of that loan agreement or commercial contract, respectively. The policyholder shall give any necessary assistance to the insured for the performance of the restructuring agreement.

(2) If the insured amount is included in a bilateral intergovernmental debt restructuring agreement, the insurer may waive the one month period provided for in paragraph 15 of this Schedule, once the bilateral agreement is effective.

Additional costs

18. (1) Any additional costs incurred by the policyholder in any actions undertaken to minimise or avoid loss shall be covered proportionally to the percentage of cover under the export credit insurance policy, provided that such costs are approved by the insurer.

(2) Additional costs include costs of court action and other legal expenses to minimise or avoid losses but exclude costs of establishing the validity of a claim.

(3) If such additional costs also relate to amounts not covered by the insurer, they shall be attributed proportionally to the insured and uninsured amounts or maturities.

General principles for setting the premium

19. (1) The premium charged for export credit insurance shall:

(a) correspond to the risk (country, sovereign, public and/or private risk) covered;

(b) adequately reflect the extent of the cover granted;

(c) be adequate to cover long-term operating costs and losses.

(2) In establishing the extent of the cover, the insurer shall take into account any condition affecting the quality of the cover including *inter alia* the percentage cover and the other conditions affecting the cover.

(3) In establishing the premium the insurer shall take into consideration :

(a) the country risk;

(b) the creditworthiness of the debtor;

(c) the total risk period; and

(d) the repayment and interest profile.

(4) The premium shall be calculated on the chargeable amount and shall be based, as far as possible, on the minimum premium benchmarks.

(5) The minimum premium benchmarks mentioned in subparagraph (4) of this paragraph shall be expressed in percentages of a reference value as if the premium were collected in full at the date of the insurance or guarantee.

(6) The reference value shall reflect –

(a) for credit risk, the principal amount of the loan or the financed or re-financed portion of the commercial contract; and

(b) for manufacturing risk, the total contract value less any down-payment effected:

Provided that, in the case of manufacturing risk, the chargeable amount may be reduced to the expected maximum loss.

Payment of premium

20. (1) The total premium amount shall be due on the date of the conclusion of the export credit insurance policy or when the contract or the loan agreement, as the case may be, becomes fully effective.

(2) The insurer may allow the policyholder to pay the premium by instalments or by adding a spread to the interest rate, provided that, this corresponds, in net present value terms, to the premium amount referred to in sub-paragraph (1) of this paragraph.

Country risk assessment

21. The level of premium charged for each country or each country category by the insurer shall be based on the appropriate country risk assessment.

Country cover policy

22. (1) The insurer shall determine its country cover policy on its assessment of the risk by country, its total outstanding exposure (as defined in paragraph 4 of this Rule) for each country as determined on the basis of the amounts for medium and long-term business, and the composition of its country risk portfolio.

(2) The insurer shall be entitled to cease or limit insuring business for a particular country.

Country risk

23. (1) The insurer shall not set any restrictions on its cover policy for countries which in terms of its country risk assessment classify as low risk countries.

(2) For countries, other than those which classify as low risk countries, the insurer may increase the applicable premium and set

restrictions and risk limits, in cumulative or alternative manner which may consist of the following :

- (a) the total outstanding exposure, as defined in paragraph 4 of this Rule, for that country;
- (b) the total value of offers of cover;
- (c) the value of new contracts to be covered;
- (d) the maximum amount covered per transaction:

Provided that, there shall be no other limitations imposed on the cover policy for a particular country below that country's established risk limits.

(3) The insurer may exceptionally, for reasons of bilateral policy or national interest or where sufficient freely convertible foreign exchange is available for the transaction in question, offer cover for specific transactions for a country or a particular group of countries for which country or group of countries it normally does not offer cover.

(4) The insurer may apply certain cover conditions to a particular country irrespective of its country risk assessment which may include:

- (a) extension of the claim waiting period;
- (b) restrictions of the cover for certain sectors of activity or certain types of projects;
- (c) requirement of guarantee from or payment by the government of the relevant country or from any government department, agency, authority, organisation or institution such as, without prejudice to the foregoing, the Ministry of Finance or the central bank of the relevant country;
- (d) requirement of an irrevocable letter of credit or bank guarantee;
- (e) a reduction in the cover percentage.

Subcontracting

24. (1) Subcontracts exclusively with parties in Malta and/or with one or more Member States or EEA States shall be automatically included in the cover which may be granted by the insurer to the principal contractor where the amount of such subcontracts is equal to or less than:

- (a) 40% for contracts of a value less than 7, 500, 000 Euro;
- (b) 3,000,000 Euro for contracts of a value between 7, 500, 000 Euro and 10, 000, 000 Euro;
- (c) 30% for contracts of a value over 10, 000,000Euro.

(2) In the event that the insurer shall not, for underwriting reasons, have provided cover for the entire transaction, such insurer shall not be precluded from entering into reinsurance or coinsurance arrangements with a view towards covering the entire transaction.

(3) In the case that the transaction involves subcontracting both in Malta and/or in Member State or EEA State and in third countries, the subcontracting in Malta and/or in a Member State or EEA State shall be included automatically in so far as the total subcontracting, in Malta and/or in Member State or EEA State and third countries, does not exceed the percentages and limits established under sub-paragraph (1) of this paragraph.

(4) Cover shall be granted to the principal contractor, under the same conditions, whether he has recourse to national subcontracting or to subcontracting in other Member States or EEA States.

(5) For the purpose of automatic inclusion in terms of sub-paragraph (1) above:

(a) the subcontractor must not be a party to the contract concluded between the principal contractor and the third party buyer and it is the principal contractor who shall have the sole responsibility to the buyer for performance of the contract and bears all the risks which may be guaranteed in relation to the latter;

(b) supplies from the subcontractor must cover goods and services, other than raw materials or semi-finished goods, and/ or services which, from the technical and economic point of view, constitute for the third party buyer essential ancillaries to the performance of the contract by the principal contractor.

(6) Insurers shall notify other insurers and any other institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, of any insurance contract entered by them granting cover for the following :

(a) a contract of a value exceeding Euro 500,000 in value involving a credit for a period of more than three years of which subcontracting in third countries exceeds 30% of the value of such contract; and

(b) a contract with subcontracting in both Malta and/or in Member State or EEA State and in third countries the total value of which exceeds 30% of the value of the contract:

Provided that, this notification procedure shall not apply to subcontracts relating to export transactions concluded on the basis of credits involving any form of financial support from the Government of Malta or from the government of any Member State or EEA State.

Basis of calculation

25. In calculating the percentages referred to in paragraph 24, the following rules shall be followed:

(a) transport and insurance costs are to be included in the total amount of the contract on which the percentages and amounts are calculated;

(b) financing costs shall be totally excluded from the amount of the contract, whether itemised or not;

(c) the non-repatriable portion of incidental local expenditure on supplies is not normally deducted from the amount of the contract, it being understood, however, that if this portion exceeds 15% of the amount of the contract less the costs of financing, the excess will be deducted.

Consultation on status of debtor

26. (1) In case of competing offers from exporters or banks established in Malta or in any Member State or EEA State, an insurer shall, upon a request made to it by any other insurer involved, respond

promptly on the status of the debtor (i.e. whether private or public as defined in paragraph 4 of this Schedule) in the particular transaction in which the insurers are involved.

(2) In case the insurers do not agree on the status of the debtor within ten (10) working days from the request for information, the insurers involved shall make the information available to and consult other insurers in an attempt to reach a conclusion on the debtor's status.

(3) If the involved insurers and the other insurers do not reach an agreement on the status of the debtor within ten (10) working days from the initiation of the consultation procedure mentioned in sub-paragraph (2) of this paragraph, the insurers involved shall bring the matter with the relevant information to the attention of any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, insurers are under the obligation to so notify.

(4) A report on any requests made by other insurers on the status of debtors and on the outcome of the consultation procedure outlined in this paragraph shall be delivered to the Authority by the insurers to whom the request for information was made in terms of sub-paragraph (1) of this paragraph, every six (6) months.

Annual Notification

27. (1) At the end of each year, but by not later than the 30th April of the following year, insurers shall, notify the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, with a report on their activity over the previous year on a retrospective basis.

(2) The report shall include the following information on all debtor countries and shall contain for each of these countries:

- (a) the total amount of cover the insurer has offered;
- (b) the total outstanding exposure, as defined in article 4 of this Rule;
- (c) the premium earned;

- (d) the amount of recoveries made;
- (e) the amount of claims paid.

(3) Insurers shall also deliver a copy of the report mentioned in sub-paragraph (1) of this paragraph to the Authority.

(4) At the beginning of each year, but by not later than the 31st January, insurers shall report to other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, on the cover policies envisaged or to be applied by the notifying insurer in the following year, including the type and level of ceilings, country cover as well as the conditions the notifying insurer intends to routinely impose on cover, as envisaged or applicable for the year to come.

Ex-ante notification for information

28. (1) Without prejudice to paragraphs 29 and 30, if at any time an insurer intends modifying in any way its cover policy as reported in the report submitted in terms of sub-paragraph (4) of paragraph 27 of this Schedule, or intends derogating from the provisions of this Schedule by granting more favourable conditions for a particular transaction or a set of transactions or for a certain sector or sectors or for a certain country or countries or in general or to charge a lower premium than that set out in its annual notification or more favourable conditions or a lower premium than that with which the insurer is notified by other insurers, the insurer shall not put into effect its decision before notifying its intention to the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, at least seven (7) working days before such decision becomes effective.

(2) If an insurer intends covering transactions with debtors in countries, for which it normally does not offer cover it shall, at least seven (7) working days before its decision becomes effective, notify other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, of its intention stating the premium rate it intends to charge.

Ex-post notification for information

Notification of derogation

29. If an insurer derogates from the provisions of this Schedule by granting less favourable conditions for a particular transaction or a set of transactions or for a certain sector or sectors or for a certain country or countries or for its overall system it shall, at the latest by the 31st January of the year following the year of implementation of such decision, to derogate from the provisions of this Schedule, notify the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, accordingly.

Notification of adjustments and modifications

30. If an insurer decides to adjust one or more elements of its country cover policy set out in its annual notification, it shall promptly notify the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, accordingly.

Notification of application of similar conditions

31. An insurer which, after having received notification from another insurer (the notifying insurer), of the notifying insurer's intention to grant more favourable conditions and/or to charge a lower premium than that set out in the notifying insurer's report pursuant to subparagraph (1) of paragraph 28 of this Schedule, decides to give the same conditions as the notifying insurer shall promptly notify the other insurers and any institution, body or organisation, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, accordingly.

Collaboration

32. Insurers shall promptly give detailed replies to any request from other insurers or from any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and

any other international commitments related thereto, are entitled to make such requests for clarifications of information on the insurer's activity.

Use of an electronic mail system

33. All notifications shall normally be made via an electronic mail system, or, if necessary, by other appropriate means of instance written communication.

Notification to the Authority

34. Insurers shall notify in writing the Authority of any communications exchanged with other insurers and with any institution, body or organisation in terms of paragraphs 28 to 32 of this Schedule.

SECOND SCHEDULE

Provisions for joint guarantees for export credit contracts.

1. The provisions containing the reciprocal obligations for joint guarantees for export credit contracts are those specified in paragraph 2 of this Schedule.

2. (1) In regulating their relationship and for the determination of their reciprocal obligations insurers who decide to grant, together with another insurer or other insurers operating in other Member States or EEA States, insurance cover for transactions involving one or more subcontractors in one or more Member States or EEA States, shall comply with the provisions of the Specimen Agreement as contained in the Annex to this Rule.

(2) This shall be without prejudice to the right of the insurers to adopt additional provisions which are not in conflict with and which do not affect the scope and application of the provisions contained in the Specimen Agreement.

(3) The Specimen Agreement shall also be adopted by such insurers which in view of the compatibility of their underwriting systems, opt to cover a single buyer credit for the whole of the contract.

A N N E X

Specimen Agreement

Scope and application

1. The scope of this Agreement is to regulate the reciprocal obligations of export credit insurers in cases where:

(a) an undertaking (hereinafter called the “principal contractor”) subcontracts to one or more undertakings (hereinafter called “the subcontractors”) established in one or more Member States or EEA States, an export contract concluded by the principal contractor with another undertaking (hereinafter called the “buyer”) where the buyer is situated :

(i) in a non-Member State or EEA State;

or

(ii) in a Member State or EEA State other than that in which the principal contractor or any of the subcontractor(s) is situated; and

(b) the principal contractor has undertaken to remit to the subcontractor(s) the portion due to the latter for the subcontract out of the sums paid by the buyer to the principal contractor, and to complete any formalities which may be necessary to transfer that portion of the payments made by the buyer which is due to the subcontractor(s);

(c) no legal ties exist between the subcontractor(s) and the buyer;

(d) the principal contractor’s credit insurer (hereinafter called the “principal insurer”) and the credit insurer(s) of the subcontractor(s) (hereinafter called “the joint insurer(s)”) are prepared to guarantee, each according to the terms of its policy, the portion of the operation carried out in their respective countries against the risks defined by them in each individual agreement;

2. The Agreement which the above mentioned export credit insurers shall conclude in each individual case relating to the issue of joint guarantees to the principal contractor and to one or more subcontractors, shall be governed by the paragraphs below.

Obligations of the principal insurer

3. The principal insurer, being the sole manager of the risk, including the subcontracted element shall undertake:

(a) to guarantee the principal contractor, in respect of the latter's part of the contract, against the risks defined by the principal insurer in each agreement;

(b) not to accept any modification to any of the terms of performance of the contract between the principal contractor and the buyer or to the contract between the principal contractor and the subcontractor(s) for the performance of that contract, unless mutually agreed with the joint insurer(s);

(c) not to disclaim liability under the provisions of the policy issued to the principal contractor in consequence of any default on the latter's part, without notifying the joint insurer(s) therefore;

(d) not to declare that the policy has lapsed without notifying the joint insurer(s) thereof;

(e) to notify the joint insurer(s) of any fact which comes to its knowledge and which might alter the nature or extent of the risk or lead to a loss;

(f) in case of loss or threat of loss, to consult the joint insurer(s) on the steps to be taken decisions to acknowledge a loss shall, as far as possible, be taken by mutual agreement, the amount of the indemnity and the method of payment being fixed in accordance with the provisions of each policy;

(g) in the event of a loss, to take the necessary steps or require the principal contractor to take the necessary steps to recover amounts unpaid and to pay back to the joint insurer the portion owed to the latter out of the sums recovered and to complete any necessary formalities for transferring such portion. The costs incurred in recovery by the principal insurer shall be divided between the insurers in proportion to the share of the contract covered;

(i) in the event of cancellation of the guarantee given to the principal contractor, to use his best endeavours to meet so much of the obligations set out in this paragraph, as are applicable.

Obligations of the joint insurers

4. Each of the joint insurers shall, for his part, undertake:

(a) to guarantee the subcontractor in his country, in respect only of the latter's part of the operation, against the risks defined by the joint insurer in each agreement;

(b) not to accept any modification to the contract concluded between the principal contractor and the subcontractor for the performance of the contract concluded with the buyer, except by mutual agreement with the principal insurer;

(c) not to disclaim liability under the provisions of the policy issued to the subcontractor in consequence of any default on the latter's part, without notifying the principal insurer thereof;

(d) not to declare that the policy has lapsed without notifying the principal insurer thereof;

(e) to notify the principal insurer of any fact which comes to his knowledge and which might alter the nature or extent of the risk or lead to a loss;

(f) in the event of cancellation of the guarantee given to the subcontractor, to use his best endeavours to comply with the obligations set out in this paragraph.

Consolidation

5. In the event of an agreement to consolidate the buyer's debt, the principal insurer and the joint insurer(s) shall hold consultations on ways and means of resolving the specific problems raised by the consolidation agreement.

Arbitration

6. Any dispute arising out of this Agreement which cannot be settled amicably shall be brought before an arbitration board composed of

three arbitrators. Each of the parties involved shall appoint one arbitrator. The third arbitrator shall be appointed by the President of the Court of Justice of the European Communities; he shall act as chairman of the Arbitration Board. The proceedings shall be governed by the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

Buyer Credit Operations

7. If there is agreement between the joint credit insurers that their buyer credit systems are sufficiently compatible, these insurers may further agree to establish or cover a single buyer credit for the whole of a contract, whereupon the provision of this Agreement shall apply by analogy.