

# Investment insurance

General terms (76-02)

---

## SOMMAIRE

<b>CHAPTER I.....</b>	<b>3</b>
Preamble.....	3
Article 1 .....	3
Article 2 - Definitions .....	3
<b>CHAPTER II.....</b>	<b>4</b>
Scope of insurance .....	4
Article 3 - Risks covered.....	4
Article 4 - Risks excluded.....	6
Article 5 - Insurance amounts .....	7
Article 6 - Effective date of cover and expiry .....	8
of insurance.....	8
Article 7 - Terms of insurance .....	8
Article 8 - Validity of insurance .....	8
<b>CHAPTER III.....</b>	<b>9</b>
Operation of the policy.....	9
Article 9 - Obligation to provide information.....	9
Article 10 - Risk management .....	10
Article 11 - Powers of ODL.....	10
<b>CHAPTER IV.....</b>	<b>11</b>
Premium .....	11
Article 12 - Premium.....	11
<b>CHAPTER V.....</b>	<b>11</b>
Indemnity .....	11
Article 13 - General principles.....	11
Article 14 - Loss account and indemnity calculation.....	11
Article 15 - Indemnity payment.....	13
Article 16 - Transfer.....	13
Article 17 - Subrogation.....	13
Article 18 - Recoveries .....	13
<b>CHAPTER VI.....</b>	<b>14</b>
Miscellaneous provisions .....	14
Article 19 - Penalties for the failure by the insured .....	14
to comply with his obligations .....	14
Article 20 - Transfer of indemnity entitlements.....	15
Article 21 - Barring by lapse of time .....	15



## CHAPTER I

# Preamble

## ARTICLE 1

The present General Terms apply to the investment insurance described in the Special Terms. Together with these Special Terms, they constitute the insurance contract between ODL, the Luxembourg export credit agency (hereinafter referred to as “ODL”) and the insured.

## ARTICLE 2 - DEFINITIONS

### 2.1 Date of investment

The date of release of cash contributions in favour of the local company, from which the insured exercises the rights in this company attached thereto.

### 2.2 Host country

The country where the investment is effected.

### 2.3 Investment

The contributions provided by the insured to the local company and described in the Special Terms. The investment may take the form of a cash contribution to the subscribed capital (in return for which the insured receives stocks or shares), of a loan or the establishment of a guarantee in favour of the local company.

### 2.4 Local company

Local company – the natural person or legal entity – established in the host country or the subsidiary or establishment in which the investment is effected.

### 2.5 Net book value

The difference between the value of the assets and the value of the liabilities of the local company; the accounting data are audited and adapted to the general principles of accounting.

### 2.6 Host country authorities

All bodies established by the authorities of the host country at whatever level, responsible for a government task and for this purpose having regulatory and other jurisdiction vis-à-vis subjects and companies established in the host country.

### 2.7 Project

The project stated in the Special Terms and relating to the investment.



## 2.8 Recoveries

All amounts in currency freely transferable, which are recovered by ODL or the insured after payment of compensation and relating to the indemnified loss.

## 2.9 Residual value

The net book value immediately after the establishment of the claim.

## 2.10 Proportion of compensation

The ratio, expressed as a percentage, of the amount of the compensation in relation to the value of the claim at the time of compensation.

## 2.11 Policy period

The policy period corresponds to a period of one year. The first policy period begins on the date stated in the Special Terms.

## CHAPTER II

# Scope of insurance

## ARTICLE 3 - RISKS COVERED

**3.1** Under the terms of this policy, the insured shall be indemnified for the loss suffered by him as the result of dispossession and/or failure to pay certain amounts, which is the direct consequence of the occurrence of risks covered:

### 3.2 Causes of claims covered

The Special Terms stipulate, among the following causes of claims covered, those which are covered under the policy:

#### 3.2.1 Expropriation and government action

- expropriation or any other act means the deprivation for the insured of his ownership without payment of an equitable compensatory indemnity;
- various measures of the public authorities, taken simultaneously or consecutively, the cumulative effect of which manifestly implies a confiscatory nature;
- failures and shortcomings of public authorities in the host country as regards their legal obligations vis-à-vis the investor or the local company in terms of legislation governing investments or infringement on the bilateral agreement on investment protection entered into by the host country and the Belgo-Luxembourg Economic Union;
- arbitrary or discriminatory legislative, regulatory or administrative measures taken by public authorities in the host country; measures taken by public authorities in good faith and having general application do not, however, constitute a cause for a covered claim, unless they assume the nature of
- confiscation measures.



### 3.2.2 *War*

war, civil war, revolution, riots, coup d'état, civil disturbances and, generally, acts of violence or conflicts of an organised political nature in the host country or in which the host country is implicated.

### 3.2.3 *Transfer*

foreign currency shortage, or a general moratorium promulgated by public authorities in the host country entailing the impossibility for the insured to obtain transfer to Luxembourg of the funds available he is entitled to on account of:

- the transfer of his contribution or liquidation of the local company;
- the allowance of an indemnity in countervalue of a deprivation of his ownership (subject to cover of the cause of claim mentioned in article 3.2.1);
- the allowance of an indemnity in countervalue of war damage (subject to cover of the cause of claim mentioned in article 3.2.2);
- the claims corresponding either to the reimbursement of a loan or to the earnings of the investment, or to the reimbursement of guarantees after their calling-in insofar:
  - the funds to repatriate correspond to certain, liquid and exigible claims and have been deposited with an appropriate institution in the host country;
  - all steps necessary for converting and transferring this deposit have been taken within 30 days following the date of payment of the funds.

As to the claims corresponding to the reimbursement of a loan, non-transfer insurance shall not, unless extended, be invoked unless the causes of claim mentioned in this article have become effective within six months after the due date.

### 3.2.4 *Breach of contract*

Under breach of contract, cover of the claim reason mentioned in article 3.2.1 is extended to the failure of public authorities in the host country to meet the specific commitments made in regard to the local company and which are limitatively mentioned in the Special Terms.

The claim shall arise directly and exclusively from a serious fault on the part of the authorities in the host country in complying with their specific commitments, which makes impossible the performance of the project by the local company.

The claim shall be total, thus causing the integral loss of the investment.

The insured or the local company shall obtain from the competent court:

- first: sentencing the authorities to meet their obligations;
- second (when the authorities do not comply): recognition of the integral loss of the investment due to the authorities' default, which makes impossible the continuation of the exploitation.

ODL may renounce the requirement of a judgment when it deems arbitrariness of public authorities and the causality link with the complete loss of the investment sufficiently established from the information at its disposal.

This insurance is limited to the policy periods mentioned in the Special Terms.



### 3.3 Events covered

The Special Terms stipulate, among the following risks, those covered under the policy:

#### 3.3.1 *Dispossession*

Dispossession is understood to mean the total or partial, but definitive loss of the investment which arises when:

- the insured is unable to exercise his rights attached to the investment, such as:
  - gaining access to securities, such as stocks and shares, attached to the investment;
  - gaining access to sums acquired by him by sale or transfer of these securities;
  - gaining access to the earnings on the investment;
  - exercising powers of decision-making or voting rights attached to the investment;
- the local company finds itself unable to exercise its rights, such as:
  - carrying out the project stated in the Special Terms;
  - gaining access to its assets;
  - pursuing its company business as described in the Special Terms;
  - pursuing its business on a reasonable economic basis; in this case, it is necessary to show that the situation is exclusively the result of the occurrence of one of the risks mentioned in Article 3.1.

Unless the definitive nature of the loss is the result of such circumstances, ODL shall consider the loss to be definitive when the situation described under Article 3.3.1 is of a duration of more than 12 months and when it is the exclusive and direct consequence of the risks mentioned in article 3.1.

#### 3.3.2 *Payment default*

Payment default shall be understood to mean the inability to recover, in Luxembourg, the certain, liquid and exigible claims mentioned in Article 3.2.3 within the waiting period for claims.

## ARTICLE 4 - RISKS EXCLUDED

No loss shall give rise to compensation if, besides the causes covered which are defined in Article 3.1, it is attributable to:

**4.1** – a fault on the part of the insured, of the local company, of their authorised agents and persons acting on their behalf, and in a general sense, of any persons for whom they are responsible.

This fault may in particular consist of:

4.1.1 – the failure to comply with the legislation and regulations in force in Luxembourg or abroad, particularly as regards the commissions, licences and formalities required for the investment, the transfer and conversion of the sums to be repatriated;

4.1.2 – the acceptance of contractual provisions which are excessive in comparison with international practice and which would impose abnormal restrictions on the rights of the insured in the event of a claim or which would abnormally affect the facts covered;

**4.2** – acts, shortcomings, decisions and administrative acts of the insured or of the local company;



**4.3** – circumstances and facts, including legislation, regulations and practices in force in the host country which were known or had occurred before the date of the investment.

## ARTICLE 5 - INSURANCE AMOUNTS

### 5.1 Insurance limit of liability

5.1.1 The maximum loss invocable against ODL under the terms of the policy, with the exception of the loss for claims under non-payment of earnings, shall not exceed the insurance limit mentioned in the Special Terms.

5.1.2 The maximum loss invocable against ODL under the terms of the policy for non-payment of earnings is equal:

- for the interest from loans, to the rate approved by ODL, as stated in the Special terms;
- in other cases, to 15% of the insurance limit of liability per policy period, on the understanding that the total amount of compensation outstanding and not recovered shall not, however, exceed 50% of the limit of liability. Should the earnings fail to reach 15% during the policy period, the facility of unused
- insurance shall be carried over to one of the two following policy periods and added to the 15% insurance facility for these two policy periods.

### 5.2 Decreasing the insurance limit of liability

Before the start of each new policy period, the insured may request a decrease in the insurance limit of liability.

ODL shall accept decreases if they relate to:

- a decrease in the value of the investment,
- a disinvestment or a repayment of the investment.

### 5.3 Raising the insurance limit of liability

Before the start of each new policy period, the insured may request that the insurance limit of liability be raised if the value of the investment has increased.

### 5.4 Stand-by cover

5.4.1 When an amount is set in the Special Terms for stand-by cover, the insured may request that the insurance limit of liability be raised at any time, on the understanding that the total increases shall not exceed the amount set for the stand-by cover.

5.4.2 ODL shall approve such raises if they relate to:

- supplementary investments;
- reinvestment of unpaid earnings, and provided that the investor has free access to these earnings in transferable currency.

5.4.3 ODL shall not approve raises if, at that time:



- there is a threat of claim;
- an indemnity is paid and has not been totally recovered.

## ARTICLE 6 - EFFECTIVE DATE OF COVER AND EXPIRY OF INSURANCE

**6.1** The insurance cover shall take effect on the date of the investment.

**6.2** Unless otherwise stated in the Special Terms, the insurance cover shall be valid for 15 years as of the date of the investment.

**6.3** Upon expiry of an initial period set in the Special Terms, the insured shall be entitled to cancel the policy annually.

ODL should be notified of this cancellation no later than 15 days before the effective date of cover of a new policy period.

**6.4** Should the insured unilaterally cancel the policy before the expiry of the initial period, he is liable to pay a cancellation fee of 50% of the premiums outstanding.

## ARTICLE 7 - TERMS OF INSURANCE

### 7.1 Guaranteed proportion

7.1.1 Losses shall give rise to compensation up to the guaranteed proportion laid down in the Special Terms.

7.1.2 The insured shall keep for his own account the proportion not guaranteed by ODL. Should he fail in this obligation, ODL shall be released from any commitment in this regard.

### 7.2 Waiting period for claims

7.2.1 Indemnity for claims under non-payment of certain sums is only paid upon expiry of the waiting period for claims stated in the Special Terms. According to the covered claim causes, this period, expressed in months, runs from:

- the date of deposit in an adequate institution in the host country of the funds to be repatriated and the fulfilment of all steps necessary for the conversion
- and transfer of this deposit;
- the date on which the fulfilment of these steps proves impossible;
- the due date of the unpaid claim.

7.2.2 Indemnity for dispossession claims shall be paid in accordance with the provisions of Article 15.

## ARTICLE 8 - VALIDITY OF INSURANCE

**8.1** On applying for a policy, the insured shall have made an exact declaration of all the events and circumstances known to him, which are likely to lead to an assessment of the risks of the investment and its economic interest.





The insured must particularly declare, both prior to the issue of the policy and during the period of cover, other investments made in the local company.

The insured shall be liable for the description, and possibly, the interpretation of the investment agreements, even if ODL has obtained knowledge of the contract documents and has not commented on them.

Any non-disclosure or incorrect declaration by the insured shall automatically void cover if it leads to a false assessment of the risks, where ODL would not have entered into the contract or would have done so on other terms, had more accurate information been available to it.

**8.2** If the economic interest has been a decisive factor in the decision to provide insurance, any non-disclosure or incorrect declaration by the insured on this subject shall automatically void cover.

**8.3** The policy is deemed to have been concluded on the date of issue stated in the Special Terms.

ODL shall not be liable should the policy fail to be returned to it within 30 days of this date, duly bearing the required signatures.

Similarly, ODL shall not be liable should any endorsements to the policy fail to be returned to it within 30 days of dispatch, duly bearing the required signatures.

## CHAPTER III

# Operation of the policy

## ARTICLE 9 - OBLIGATION TO PROVIDE INFORMATION

**9.1** The insured is required to inform ODL without delay of:

- any event likely to affect the risk,
- a petition for bankruptcy, composition or any similar proceedings to which he may be subject, including any change in his financial situation.

**9.2** The insured must send to ODL, within 9 months following the end of each financial year of the local company, a report on the management, situation and development of this company.

Attached to this report shall be a balance sheet, an income statement, and an auditor's report, as well as any relevant document that may have been drawn up by an independent accountant.

**9.3** If appropriate, the insured may submit supplementary information on the difference between the value of the investment which can be deduced from the accounts and the actual value.

**9.4** The insured must notify ODL within 15 days of:

9.4.1 – the date, nature and value of any contributions brought into the local company as part of the investment;

9.4.2 – the transfer to third parties of securities representing the investment, the winding-up of the local company and, in general, any legal act regarding the investment;



9.4.3 – any substantial modification to the investment or any modification to the activities of the local company;

9.4.4 – the collection in the host country or in Luxembourg of sums corresponding either to the transactions mentioned in Article 9.4.2, or to payments due or made by the local company or the authorities of the host country.

Statements made to ODL must include:

- the date and amount of transactions which they apply to;
- as regards repatriations, the conversion rate of sums in foreign currencies;
- the distinction between principal and earnings.

## ARTICLE 10 - RISK MANAGEMENT

**10.1** The insured shall be required to manage the risk with due care and with as much caution and diligence as if he were not insured.

**10.2** In the event of a claim or threat of claim, or the occurrence of any event likely to affect the risk, the insured must consult ODL without delay on any measures to be taken and comply with any instructions given to him.

**10.3** The insured shall, bearing any consequences as regards the non-guaranteed proportion resulting from Article 7, authorise ODL to exercise all rights deriving from the investment, and, in particular, to initiate any proceedings or conclude any arrangement deemed necessary for the protection of insured interests.

If ODL so requests, the insured shall submit to it in a form invocable against third parties, any documents and deeds whatsoever which are essential or useful to the exercising of these rights.

## ARTICLE 11 - POWERS OF ODL

**11.1** Should it have reason to believe that there is a threat of the occurrence of any of the facts referred to in Article 3.2, ODL may prescribe any measures which it deems appropriate to prevent a claim from being filed or to curtail the effects thereof.

**11.2** ODL may request the insured to provide a report on the situation of the local company as well as the latest balanced sheets and income statements drawn up by the latter.

**11.3** ODL may check all declarations of the insured at any time, as well as his observation of the obligations imposed upon him by the policy. ODL may also check and audit the books of the insured.

These checks and audits may be carried out by a ODL representative or by an expert appointed by it.



## CHAPTER IV

# Premium

### ARTICLE 12 - PREMIUM

**12.1** The premium shall be paid annually at the beginning of each policy period.

**12.2** The annual premium is, in principle, indivisible. It shall notably be unaffected by risk reductions during a policy period.

## CHAPTER V

# Indemnity

### ARTICLE 13 - GENERAL PRINCIPLES

**13.1** The insured shall request compensation from ODL in writing. To this end, he shall send ODL all information and documents required to prove the entitlement to compensation and to determine the amount of the loss.

For instance, the information and documents furnishing evidence of entitlement to compensation may, besides the accounting documents mentioned in Article 14, consist of:

- expropriation and government action: laws, decrees, orders and ordinances of the host country;
- war: certificate by the Luxembourg Ministry of Foreign Affairs;
- transfer: bank certificate stating the fulfilment of the acts and formalities necessary to the conversion and the transfer of the deposit in local currency;
- breach of contract: sentence pronounced by the competent court.

**13.2** If the loss is the consequence of entitlements disputed by the authorities of the host country, ODL may require that the dispute be settled by a judicial decision or an arbitration ruling, before complying with a request for compensation.

### ARTICLE 14 - LOSS ACCOUNT AND INDEMNITY CALCULATION

#### 14.1 Losses for claims under dispossession

14.1.1 Losses likely to be indemnified are equal to the loss account debit balance drawn up in euro as follows:

- on the debit side, the lowest of the following two amounts appears:
  - the insurance limit of liability,
  - the value of the investment the day before the claim is filed. Should the claim not immediately give rise to a definitive loss, the value on the day prior to the occurrence of the situation described in Articles 3.2.1 and

3.2.2 shall be used.



This value shall be determined on the basis of the net book value of the local company, as it may be deduced from the financial accounts of this company. In this respect ODL may require that accounting data be adapted to the generally recognised accounting principles;

- on the credit side, one or several of the following amounts appear:
  - the residual value immediately after the claim has been filed.
  - Should the claim not immediately give rise to a definitive loss, the residual value at the end of the period required to recognise the definitive nature of the loss, as defined in Article 3.2, shall be used;
  - losses bearing no relation to the risks covered as defined in Article 3.1;
  - indemnities obtained in convertible currency by the insured as compensation for losses incurred;
  - the value of any benefits, such as costs saved, that the claim has procured on behalf of the insured;
  - any return resulting from the total or partial transfer of the investment or liquidation of the local company.

14.1.2 Amounts drawn up in foreign currency are converted into euro at the following conversion rates:

- for the value of the investment to be entered on the debit side of the loss account: the rate of the day prior to the occurrence of the claim;
- for the sums collected in Luxembourg in foreign currency to be entered on the credit side of the loss account: the rate at which they have been or at which they would have been effectively converted in euro;
- for the residual value to be entered into the credit side of the loss account:
- the rate in force the day after that on which the loss is considered to be definitive.

#### **14.2 Losses for claims under non-payment**

14.2.1 Losses which may be indemnified are equal to the loss account debit balance drawn up in euro as follows:

- on the debit side, the amount of debt that the insured has been unable to recover in Luxembourg;
- on the credit side, any sum collected in Luxembourg by the insured until the date of receipt of the indemnity for the debt.

14.2.2 Amounts drawn up in foreign currency are converted into euro at the following conversion rates:

- for the sums to be entered on the debit side of the loss account: the rate on the date of fulfilment of the acts necessary to the conversion and the transfer of the deposit of the funds to repatriate or, failing that, the rate on the day on which the fulfilment of these steps proves impossible;
- the sums collected in Luxembourg in foreign currency: the rate of the day on which they were collected;
- this rate may not exceed any maximum conversion rate which may be laid down in the Special Terms.

**14.3** Under-insurance gives rise to the application of the proportional rule.

#### **14.4 Extraordinary costs**

ODL shall indemnify the extraordinary costs, if any, arising from a claim or threat of claim, incurred with the approval of ODL with a view to avoiding or limiting a loss giving rise to compensation.



These costs are not included in the insurance limit of liability referred to in Article 5.

If, however, such costs also relate to amounts not insured by ODL, they shall be proportionally offset against the amounts insured and uninsured.

#### **14.5 Indemnity**

Indemnity shall be calculated by applying the guaranteed proportion to the loss account debit balance.

### **ARTICLE 15 - INDEMNITY PAYMENT**

**15.1** The amount of the indemnity is paid:

15.1.1 – in the event of loss for dispossession claims: within 30 days as of the date on which the insured provides proof of the loss;

15.1.2 – in the event of loss for claims under non-payment: within 30 days as of the expiry date of the waiting period of the claim.

**15.2** ODL shall pay a provisional indemnity if the amount of the loss cannot be established within 12 months after the claim and provided that the insured is not responsible for this delay.

**15.3** The insured shall, simultaneously with the bank responsible for the collection and/or which is the transferee of the entitlement to the indemnity, sign the indemnity receipt. This receipt also implies an order to pay all amounts recovered directly to ODL, up to the amount of the indemnified proportion.

### **ARTICLE 16 - TRANSFER**

The insured undertakes to transfer to ODL at the simple request of the latter, all covered shares, rights, securities and debts relating to the indemnified loss.

### **ARTICLE 17 - SUBROGATION**

Through the payment of indemnity ODL is automatically subrogated to all rights and actions of the insured relating to the indemnified loss, and this to the extent of its effective intervention. This provision is in application of Article 11 of the law of 31 August 1939.

### **ARTICLE 18 - RECOVERIES**

**18.1** Recoveries concerning indemnity under a claim for non-payment of certain sums shall be shared between ODL and the insured, the share of ODL being determined on the basis of the compensation proportion.

Sums shall be shared irrespective of the amount of the sums recovered, without regard to, in particular, any exchange losses or gains which would have affected this amount.

**18.2** Recoveries concerning an indemnity under a dispossession claim are shared between ODL and the insured, the share of ODL being determined on the basis of the compensation proportion, without the amount thus calculated exceeding the sum of:



- the amount of the indemnity paid, increased by legal interest as from the day of payment until the day of repayment to ODL;
- the extraordinary costs indemnified.

**18.3** Recoveries shall be shared without application of Article 1252 of the Civil Code.

## CHAPTER VI

# Miscellaneous provisions

## ARTICLE 19 - PENALTIES FOR THE FAILURE BY THE INSURED TO COMPLY WITH HIS OBLIGATIONS

**19.1** The failure to pay all or part of the premium or any sum owed by the insured shall automatically entail the suspension of the obligations of ODL.

Without prejudice to its entitlement to sums which are due to it, ODL shall be definitively released from its obligations 15 days after formal notice has been given and ignored.

**19.2** Any sums whatsoever owed to ODL by the insured shall automatically and without formal notice bear post-maturity interest, the rate of which is determined as follows:

- with regard to the euro, the three-month EURIBOR increased by 1%;
- with regard to other currencies: the three-month interbank rate of the currency concerned as fixed on the London market, increased by 1% (when that rate is not available on the London market, the reference rate shall be that of the main financial centre of the currency concerned).

The rates referred to above shall be determined on the date from which the post-maturity interest runs. They shall be reviewed automatically every 3 months.

Such post-maturity interest shall run from:

- the date of indemnity, in the case of an undue claim;
- the 16th day from collection, in the case of recoveries defined in Article 18. Moreover, if the recoveries are payable in foreign currency, the insured shall be required to make good the exchange loss incurred by ODL due to late payments, incomplete payments and payments in another currency;
- the 31st day from the debit note, or, in the absence of a debit note, the date stated in the insurance document, in other cases.

Both post-maturity interest and the sums due against an exchange loss by ODL as referred to in this article shall be increased by a flat-rate of EUR 25,- to cover the administrative costs incurred by ODL through the fault of the insured.

**19.3** The insured may forfeit his rights and be obliged to reimburse any indemnity paid to him if, through his own fault, he increases the risk or is in breach of the obligations imposed on him by the policy.

**19.4** The insured forfeits his rights and is obliged to reimburse any indemnity paid to him if he is condemned under a definitive court sentence, pronounced on the basis of penal provisions made to



enforce the OECD agreement to fight corruption of foreign civil servants in international transactions, signed in Paris on 17 December, 1999.

ODL's commitments are automatically suspended in case of legal proceedings started against the insured on the basis of the above provisions.

The insured shall report without delay any proceedings started or any penal condemnation delivered against him.

## ARTICLE 20 - TRANSFER OF INDEMNITY ENTITLEMENTS

**20.1** Insurance cover may be transferred to a third party with the agreement of ODL.

This agreement shall take the form of an endorsement to the policy signed by ODL, the insured and the transferee.

**20.2** Such transfer shall, without releasing the insured from any of his obligations, render the transferee jointly and severally liable with the insured in respect of the fulfilment of the risk management obligations provided for under Articles 9 and 10, to the extent of his powers of control and action.

**20.3** Any exceptions which may be invoked by ODL against the insured shall be invocable against the transferee.

## ARTICLE 21 - BARRING BY LAPSE OF TIME

Any action resulting from this insurance cover shall be barred after the lapse of three years, as from the event which gives rise to it.

