

1 January 2002

## **General Conditions of Guarantee for Non-Shareholder Loan Investments**

## Table of Contents

CHAPTER I. INTRODUCTION .....	2
1 <i>Scope of Application</i> .....	2
2 <i>Definitions, References and Headings</i> .....	2
3 <i>Applicable Law and Settlement of Disputes</i> .....	2
4 <i>The Guarantee Holder's Right to Appeal</i> .....	2
6 <i>Validity and entering into Force of the Investment Guarantee</i> .....	3
7 <i>Notices</i> .....	3
CHAPTER II. RISKS COVERED BY THE INVESTMENT GUARANTEE.....	3
8 <i>Transfer Restriction</i> .....	3
9 <i>Expropriation</i> .....	4
10 <i>War and Civil Disturbance</i> .....	5
11 <i>General Exclusions from the Obligation to Pay Compensation</i> .....	5
CHAPTER III. AMOUNT OF THE GUARANTEED LOAN AND PAYMENT OF THE PREMIUM .....	6
12 <i>Amount of the Guaranteed Loan</i> .....	6
13 <i>Payment of the Premium</i> .....	6
CHAPTER IV. LOSS ELIGIBLE FOR COMPENSATION .....	6
14 <i>Amount of Compensation</i> .....	6
15 <i>Payment of Compensation</i> .....	8
16 <i>Recovery Costs</i> .....	8
17 <i>Finnvera's Right to Set-Off</i> .....	8
18 <i>Date of Loss</i> .....	8
19 <i>Deductions</i> .....	9
20 <i>Reference Rate of Exchange</i> .....	9
CHAPTER V. HANDLING OF CLAIMS AND SUBROGATION.....	10
21 <i>Filing of Claims</i> .....	10
22 <i>Maximum Periods for Claim Determination</i> .....	10
23 <i>Payment Period of Compensation</i> .....	11
24 <i>Partial Payment</i> .....	11
25 <i>Advance Compensation</i> .....	11
26 <i>Overdue Interest</i> .....	11
27 <i>Transfers, Assignments and Subrogation</i> .....	12
28 <i>Transfer and Division of Payments</i> .....	13
CHAPTER VI. DUTIES OF THE GUARANTEE HOLDER .....	13
29 <i>Provision of Information</i> .....	13
30 <i>Assignability of Rights based on the Investment Guarantee</i> .....	13
31 <i>The Guarantee Holder's Self-Risk</i> .....	14
32 <i>The Guarantee Holder's Other Obligations</i> .....	14
CHAPTER VII. TERMINATION AND DEFAULT .....	15
33 <i>Termination by the Guarantee Holder</i> .....	15
34 <i>Termination by Finnvera</i> .....	15
35 <i>Release of Finnvera from Liability</i> .....	15

## Appendix Definitions

## **Chapter I. Introduction**

### **1 Scope of Application**

These General Conditions apply to Investment Guarantees issued by Finnvera in respect of a loan granted to a Project Enterprise in the Host Country in cases when the Guarantee Holder does not have an ownership interest in the Project Enterprise. These General Conditions, together with the Guarantee Agreement, including any amendments that may be made thereto, shall constitute the valid Investment Guarantee, unless otherwise agreed in writing in the Guarantee Agreement or otherwise.

### **2 Definitions, References and Headings**

- 2.1 The terms used in these General Conditions are defined in the Appendix hereto.
- 2.2 Unless otherwise stated, all references herein to chapters, sections, subsections and the Appendix are to those of these General Conditions.
- 2.3 Headings in these General Conditions are inserted for convenience of reference only. They shall not be taken into account in the application or interpretation of these General Conditions.

### **3 Applicable Law and Settlement of Disputes**

- 3.1 The Investment Guarantee shall be governed by Finnish law.
- 3.2 Disputes between the Guarantee Holder and Finnvera, arising out of the Investment Guarantee, shall be decided by the District Court of Helsinki, unless otherwise agreed between the parties.

### **4 The Guarantee Holder's Right to Appeal**

Should the Guarantee Holder not be satisfied with Finnvera's decision on compensation, the Guarantee Holder must institute legal proceedings regarding the decision on compensation in the court referred to in Section 3.2, within (6) six months of having verifiably been informed of the decision on compensation. If the Guarantee Holder does not institute proceedings within the above-mentioned time, or if the proceedings thus initiated are not brought to a conclusion, the case shall rest on Finnvera's decision on compensation.

### **5 Confidentiality**

All information supplied by the Guarantee Holder to Finnvera is kept confidential. In the event that Finnvera decides to reinsure the risk covered by the Investment Guarantee, or part of that risk, Finnvera has the right to give information on the Investment Guarantee to

the extent necessary for arranging the reinsurance.

## **6 Validity and entering into Force of the Investment Guarantee**

The Investment Guarantee shall be binding on Finnvera as from the signing of the Guarantee Agreement, unless otherwise agreed in the Guarantee Agreement. In regard to the loan principal, the Investment Guarantee comes into force when loan funds are paid to the Project Enterprise or to its order. In regard to other sums covered by virtue of the Guarantee Agreement, the Investment Guarantee comes into force when the Project Enterprise incurs such debt payable to the Guarantee Holder.

## **7 Notices**

Any notices concerning the Investment Guarantee shall be given in writing. Notices are deemed to have been given when they have been delivered by hand or by post, telegram, telex or facsimile, or by some other form of electronic communication, to the recipient at the address specified in the Guarantee Agreement or at some other address designated at a later date.

## **Chapter II. Risks Covered by the Investment Guarantee**

### **8 Transfer Restriction**

The Investment Guarantee given against Transfer Restriction shall cover the following events:

- (a) an action by the Host Government that prevents the Guarantee Holder or the Project Enterprise, as the case may be, from directly or indirectly:
  - (i) converting Local Currency into Guarantee Currency in order to make a payment under the Loan Agreement, including the denial of conversion at an exchange rate which is at least as favourable as the Reference Rate of Exchange, or
  - (ii) transferring Guarantee Currency outside the Host Country in order to make a payment under the Loan Agreement;
- (b) failure by the Host Government (or by entities authorised under the laws of the Host Country to operate in the foreign exchange markets) to effect such conversion and/or transfer on behalf of the Guarantee Holder or the Project Enterprise;

provided that in the cases of (a) and (b) above:

- (A) the Guarantee Holder or the Project Enterprise can within the Host Country lawfully and freely dispose of the sum in Local Currency or Guarantee Currency, as the case may be, that was intended as a payment under the Loan Agreement; and

- (B) the Guarantee Holder and/or the Project Enterprise, without success for a period of at least two months, has attempted to convert and/or transfer the currency in accordance with the laws, regulations and procedures of the Host Country. The above period is calculated from the later of: (i) the due date of the payment under the Loan Agreement, or (ii) the date on which the Guarantee Holder and/or the Project Enterprise first attempts to convert and/or transfer the Local Currency or Guarantee Currency.

## 9 Expropriation

9.1 The Investment Guarantee against Expropriation shall cover default on payments under the Loan Agreement in cases when the default is caused by expropriatory measures taken, directed, authorised, ratified, or approved by the Host Government (such as nationalisation, expropriation or confiscation).

9.2 Subject to Subsections 9.3, 9.4 and 9.5 below, a measure shall be considered expropriatory if the measure:

- (a) prevents the Project Enterprise from paying or the Guarantee Holder from receiving a payment under the Loan Agreement;
- (b) deprives the Guarantee Holder of the creditor's right to a collateral, or a commercial repayment guarantee, given as security for the payments under the Loan Agreement and specified in the Guarantee Agreement;
- (c) deprives the Guarantee Holder or the Project Enterprise of the use and control of funds deposited (either in Local Currency or Guarantee Currency) by the Guarantee Holder, or by the Project Enterprise for the account of the Guarantee Holder, with a financial institution in the Host Country, and such funds constitute a payment or payments under the Loan Agreement;
- (d) deprives the Project Enterprise of its right of possession to the enterprise's tangible or intangible assets or its right to use, or freely dispose of, the enterprise's tangible or intangible assets, or prevents the Project Enterprise's operations or a material part thereof;
- (e) prevents the Project Enterprise physically from carrying out the Investment Project in its entirety, or material parts thereof, in a manner referred to in the Guarantee Agreement;
- (f) imposes taxes or other financial obligations on the Project Enterprise to the extent that it becomes impossible for the Project Enterprise to continue its business that would otherwise be viable;

provided, however, that:

- (A) in the cases of (a), (d), (e) and (f) above, the measure results in a default that continues for a minimum period of six consecutive months. No such waiting period shall be applied to subsequent consecutive defaults for which Finnvera is liable in accordance with Subsection 14.3 hereof;
- (B) in the case of (b) above, the measure deprives the Guarantee Holder of the said rights for a minimum period of six consecutive months; and

- (C) in the case of (c) above, the deprivation of funds deposited continues for a minimum period of two consecutive months.
- 9.3 A series of measures by the Host Government shall be regarded as one measure, if their combined effect is expropriatory within the meaning of Subsection 9.2.
- 9.4 The Investment Guarantee does not, however, cover a loss caused by measures taken by the Host Government if the measure is of a general nature, is non-discriminatory with respect to juristic persons irrespective of their ownership, and is taken in the public interest for such purposes as ensuring public safety, raising tax revenues, protecting the environment, or regulating economic activities, unless the measure is, however, designed by the Host Government to have an expropriatory effect.
- 9.5 Breach by the Host Government of a contractual obligation to the Guarantee Holder and/or the Project Enterprise shall not, in and of itself, constitute an expropriatory measure.

## **10 War and Civil Disturbance**

- 10.1 The Investment Guarantee against War and Civil Disturbance shall cover a default on a payment under the Loan Agreement when this default is a direct and immediate result of acts of war (whether declared or undeclared), revolution, insurrection, civil war, civil strife of a lesser degree, terrorism or sabotage that cause:
- (a) the destruction, disappearance or physical damage of the Project Enterprise's real or tangible property (other than precious metals, gems, works of art, money or documents) in the Host Country, provided that such property has been used principally in connection with the Investment Project; or
  - (b) an interruption of operations of the Project Enterprise, which are essential to its overall financial viability for a minimum of six consecutive months.

Provided in addition to Subsection (a) and (b) above, that the default has continued for at least two months. No such waiting period shall be applied to subsequent consecutive defaults for which Finnvera is liable in accordance with Subsection 14.3 hereof.

- 10.2 The coverage for War and Civil Disturbance applies only to acts undertaken with the primary intent of achieving a political objective. As a political objective shall not be considered acts undertaken primarily in order to achieve labour, student, or other non-political objectives.

## **11 General Exclusions from the Obligation to Pay Compensation**

Finnvera shall in no case be liable for the payment of compensation for any Loss which is due to:

- (a) any action or omission:

- (i) that was verifiably agreed to by the Guarantee Holder or the Project Enterprise unless such agreement was extracted by force, or
  - (ii) the preponderant cause of which is the Guarantee Holder's unlawful conduct, such as failure to comply with the laws or regulations of the Host Country, or with other obligations set by the Host Government;
- (b) any law, decree or regulation in force in the Host Country on the date when the Guarantee Agreement was concluded, or any action or omission of the Host Government or any other event occurring before the date when the Guarantee Agreement was concluded.

### **Chapter III. Amount of the Guaranteed Loan and Payment of the Premium**

#### **12 Amount of the Guaranteed Loan**

The Guarantee Agreement designates the amount of the Guaranteed Loan, which is reduced in accordance with the repayment schedule agreed upon in the Loan Agreement and confirmed in the Guarantee Agreement. Any compensation paid by virtue of the guarantee shall respectively diminish the amount of the Guaranteed Loan.

#### **13 Payment of the Premium**

The Guarantee Holder shall pay to Finnvera the Premium specified in the Guarantee Agreement. Irrespective of the provisions of Sections 33 and 34 on termination of the guarantee, the Premium shall be paid up to the end of the Guarantee Year in question. Finnvera shall not refund any Premiums already paid.

### **Chapter IV. Loss Eligible for Compensation**

#### **14 Amount of Compensation**

- 14.1 For the Guaranteed Loan, the Investment Guarantee shall only cover a Loss that has been caused by a Guarantee Event referred to in Chapter II, when the Date of Loss, as defined in Section 18, falls within the Guarantee Period. A prerequisite for the compensation is that the Guarantee Holder's receivable from the Project Enterprise is clear and undisputed.
- 14.2 The compensation payable for a Loss is the Guaranteed Percentage of the Loss eligible for compensation in the Guarantee Currency. In addition, Finnvera pays compensation for recovery costs as per Section 16. Subject to the provisions in Sections 18-20, the Loss eligible for compensation is calculated as follows:
- (a) In the event of a Transfer Restriction, the Loss consists of the funds that the Guarantee Holder or the Project Enterprise has not been able to convert and/or transfer to make a payment under the Loan Agreement.
  - (b) In the event of Expropriation, as a Loss shall be regarded

- (i) in the cases of Subsections 9.2 (a), (d), (e) and (f), the amount of the payments under the Loan Agreement that the Guarantee Holder has not received in accordance with the Loan Agreement;
  - (ii) in the case of Subsection 9.2 (b), the amount that the Guarantee Holder would probably have received for the collateral deprived – this amount being based on evidence supplied by the Guarantee Holder and obtained by Finnvera in realisation of the collateral on the Date of Loss;
  - (iii) in the case of Subsection 9.2 (c), the funds of which the Guarantee Holder or the Project Enterprise has been deprived so that the funds cannot be used for payments due in accordance with the Loan Agreement.
- (c) In the event of War and Civil Disturbance, as a Loss shall be regarded the amount of payments due under the Loan Agreement that the Guarantee Holder has not received.
- 14.3 If Finnvera is liable for compensation due to a default on a payment under the Loan Agreement caused by an event of Expropriation or War and Civil Disturbance, Finnvera shall compensate subsequent consecutive payments, unless Finnvera proves that the subsequent defaults were not caused by said events of Expropriation or War and Civil Disturbance. If Finnvera pays compensation for a default and the Guarantee Holder receives subsequent payments under the Loan Agreement, the Guarantee Holder must prove that any defaults thereafter are caused by a separate event of Expropriation or War and Civil Disturbance.
- 14.4 Compensation for losses in Local Currency shall be paid in Guarantee Currency using the Reference Rate of Exchange on the Date of Loss.
- 14.5 If the Guarantee Holder (or any of its subsidiaries or affiliates) has guaranteed or granted some other loans than the loan guaranteed by Finnvera to the Project Enterprise with respect to the same project and, as of the date of the decision on compensation in respect of the loan guaranteed by Finnvera, the Project Enterprise has repaid a greater percentage of such other loans than of the Guaranteed Loan during the period of validity of the Investment Guarantee, Finnvera shall adjust the compensation payable (or, if compensation has already been paid, require the adjustment of such compensation) so that such payment percentages are equal. If, during the period of validity of the Investment Guarantee, the Project Enterprise has made repayments to the Guarantee Holder in respect of a loan pertaining to the same project but not guaranteed by Finnvera, before their original due dates, the total amount of such payment repayments shall be deducted from any compensation payable by Finnvera.
- 14.6 The Investment Guarantee shall not cover
- (i) penalty interest or penalty fees for late payment or costs caused by premature termination of the loan;
  - (ii) fees and costs incurred by the Guarantee Holder, or by another party acting on behalf of the Guarantee Holder, when funds are converted and transferred in accordance with the laws, regulations and business practices in force in the Host Country;



- (iii) any loss related to credit funds that the Guarantee Holder and/or the Project Enterprise has not attempted to transfer or convert as soon as practically possible;

### **15 Payment of Compensation**

After becoming liable to pay compensation, Finnvera shall pay the compensation in accordance with the loan repayment schedule confirmed in the Guarantee Agreement. However, at its discretion, Finnvera has the right to pay the Guaranteed Percentage of the remaining principal of the Guaranteed Loan (including any receivables that have not fallen due), in full or in part, in advance to the Guarantee Holder. Likewise, the payment may include the Guaranteed Percentage of all outstanding interest accumulated up to the payment date of the compensation.

### **16 Recovery Costs**

Finnvera shall pay compensation for recovery costs in respect of the Guaranteed Loan in the same proportion as it has paid compensation for the Guaranteed Loan. The Guarantee Holder must present a receipt of the recovery costs together with other relevant evidence. Compensation for recovery costs shall be paid in the currency in which these costs have been paid. If this is not possible, the compensation shall be converted to the Guarantee Currency using the Reference Rate of Exchange on the day when the costs were paid.

### **17 Finnvera's Right to Set-Off**

If Finnvera has receivables from the Guarantee Holder eligible for set-off, Finnvera is entitled to use the compensation payable to the Guarantee Holder, including the relevant interest and expenses, for setting off its receivables.

### **18 Date of Loss**

The Date of Loss is determined as follows:

- (a) In the event of a restriction on currency transfer or conversion, as referred to in Section 8, the Date of Loss is the date when the first attempt at transfer or conversion was made in regard to the Guarantee Event in question.
- (b) In the event of Expropriation, the Date of Loss is:
  - (i) in cases falling under Subsection 9.2 (a), the due dates of the payments under the Loan Agreement for which the claim for compensation filed with Finnvera concerns;
  - (ii) in cases falling under Subsection 9.2 (b), the day preceding the date on which the deprivation of the right took place;
  - (iii) in cases falling under Subsection 9.2 (c), the day preceding the date on which the deprivation of the use and control of the funds deposited took place;

- (iv) in cases falling under Subsections 9.2 (d), (e) and (f), the day preceding the date on which the Host Government initiated the measures.
- (c) In the event of War and Civil Disturbance, the Date of Loss is the day preceding the date on which the destruction, disappearance or physical damage in the case referred to in Subsection 10.1 (a) took place, or the day preceding the date on which the Project Enterprise's operations were interrupted as referred to in Subsection 10.1 (b).

## **19 Deductions**

- 19.1 When calculating the Loss eligible for compensation, all payments under the guaranteed Loan or other benefits received by the Guarantee Holder by virtue of the Guarantee Event from the Host Government or otherwise before payment of the compensation, including funds received by the Guarantee Holder from the realisation of collateral, shall be deducted in Guarantee Currency for the receivables based on the Guaranteed Loan. The same also applies to payments that the Project Enterprise or any other parties have received on the basis of the Guarantee Event which they have transferred to the Guarantee Holder. The sum to be deducted is converted into Guarantee Currency in accordance with Section 20 using the Reference Rate of Exchange on the day when the Guarantee Holder has received the payment based on compensation, on other benefit or on realisation of collateral.
- 19.2 Finnvera's liability for compensation shall not be deducted by any payments in Local Currency that the Guarantee Holder has not been able to convert freely and transfer from the Host Country or that the Guarantee Holder has not been able to use otherwise or that the Project Enterprise has not been able to use for the benefit of the Guarantee Holder. Upon demand, the Local Currency, or the right to the Local Currency that can neither be converted and transferred nor be used, must be assigned to Finnvera.
- 19.3 Any monies that are received after payment of the compensation shall be divided between the Guarantee Holder and Finnvera in the same proportion as Finnvera has paid compensation.

## **20 Reference Rate of Exchange**

- 20.1 The Reference Rate of Exchange is used when converting the Local Currency into Guarantee Currency. The principal Reference Rate of Exchange is the Exchange Rate Published by the European Central Bank. If this is not available, the Reference Rate of Exchange shall be the average rate of exchange applied by the central bank or other foreign exchange regulatory authority of the Host Country (hereinafter referred to as the "central bank") for conversion of the Local Currency into Guarantee Currency on the Date of Loss. In addition, the provisions of Subsections 20.2-20.4 are taken into account when determining the Reference Rate of Exchange.
- 20.2 If, on the Date of Loss, the central bank has not allowed free currency exchange or has applied multiple exchange rates, the Reference Rate of Exchange shall be computed on the basis of one of the following exchange rates in the following order of priority:

- 1) the exchange rate generally applied by the central bank on the Date of Loss for purposes of servicing private foreign debt;
  - 2) the exchange rate legally used by commercial banks or any other private market in the Host Country on the Date of Loss;
  - 3) the exchange rate used in the most active market outside the Host Country on which Local Currency has been converted into Guarantee Currency on the Date of Loss
- 20.3 The Reference Rate of Exchange for any date for which none of the above methods of calculation yields a result shall be calculated by applying the methods referred to in Subsection 20.2, in the order of priority given in the subsection, to each of the 30 banking days immediately preceding the Date of Loss, in serial order, commencing with the most recent banking day, until a Reference Rate of Exchange has been calculated.
- 20.4 In the event the Reference Rate of Exchange cannot be calculated as provided above, Finnvera and the Guarantee Holder shall designate an expert to make a final decision on the applicable Reference Rate of Exchange. The cost of determining the Reference Rate of Exchange by such expert shall be equally shared by the Guarantee Holder and Finnvera.
- 20.5 The provisions of this Section 20 for the conversion of the Local Currency into Guarantee Currency shall be applied *mutatis mutandis* to any other conversion of one currency into another for the purposes of this Investment Guarantee.

## **Chapter V. Handling of Claims and Subrogation**

### **21 Filing of Claims**

- 21.1 A claim based on the Investment Guarantee may be filed when the risk specified in Sections 8, 9 or 10 has materialised and when the waiting periods defined in said sections have expired. However, the claim must be filed within 12 months of the due date(s) of the payment(s) relating to the Guarantee Event under the Loan Agreement.
- 21.2 A claim must be filed in writing. When submitting a claim, the Guarantee Holder must provide Finnvera with all reasonably available information, documents and other evidence on the matter at hand.
- 21.3 In the event that a claim does not contain sufficient information to settle the matter, Finnvera shall request the Guarantee Holder to provide any reasonably available additional information. If the Guarantee Holder, notwithstanding written requests, does not provide the additional information requested, Finnvera may set a deadline by which the Guarantee Holder must supply it. Thereafter, Finnvera may make a decision on compensation on the basis of the information available.

### **22 Maximum Periods for Claim Determination**

Finnvera shall give its decision on compensation within four months of the date when the claim arrived at Finnvera and the Guarantee Holder has presented the evidence requested. If the Guarantee Holder has not provided Finnvera with the information or additional evidence referred to in Subsection 21.3, Finnvera may make a decision on compensation within four months after the expiration of the deadline set by Finnvera.

### **23 Payment Period of Compensation**

Finnvera shall pay the claim within two months of the date of the decision on compensation on condition that the Guarantee Holder and/or the Project Enterprise has made all transfers and assignments required by Section 27, unless otherwise determined by virtue of said section. The above provisions on compensation also apply to partial payment and advance compensation.

### **24 Partial Payment**

If, after reasonable efforts, the Guarantee Holder is unable to provide all evidence required by Finnvera to determine the amount of compensation due but Finnvera, based on the information received by it, has considered itself having become liable to pay the claim, Finnvera may make a partial payment in the amount in which the Guarantee Holder can be deemed entitled to compensation on the basis of the information available.

### **25 Advance Compensation**

25.1 Finnvera may make a decision on advance compensation irrespective of whether the final amount of the Loss has been determined. For payment of the advance compensation, Finnvera requires a repayment commitment from the Guarantee Holder. Finnvera may also require security to ensure repayment. When making the final decision on compensation, Finnvera may revise the decision on advance compensation if warranted by additional evidence or other factors.

25.2 If the advance compensation exceeds the final amount of compensation which is to be confirmed at a later date, the Guarantee Holder shall, by a deadline determined in the decision on compensation, reimburse the excess amount he has received. In addition, the Guarantee Holder shall pay the interest determined in the decision on advance compensation on sums that are reimbursed added with penalty interest and any recovery costs that may have been incurred in the recovery of the advance compensation.

### **26 Overdue Interest**

26.1 Finnvera shall pay overdue interest on any amounts of compensation that it has not paid in accordance with the provisions of Sections 23, 24 or 25.

26.2 If Finnvera recovers from the Guarantee Holder a compensation, or part of a compensation, already paid, Finnvera shall calculate overdue interest on this recovered amount as from the date the compensation was paid. The Guarantee Holder is additionally required to compensate Finnvera for all damage caused by

non-compliance with the guarantee terms.

- 26.3 In the cases referred to above in Subsections 26.1 and 26.2, the annual interest is 16%. The interest is calculated using a 30-day month and a 360-day year. In addition, the Guarantee Holder is required to compensate Finnvera for any recovery costs incurred.

## **27 Transfers, Assignments and Subrogation**

- 27.1 Before payment of the claim, and after Finnvera has issued its decision on compensation, or the court of law referred to in Subsection 3.2 has issued its decision, the Guarantee Holder shall carry out the following transfers and assignments if not otherwise determined by Finnvera:
- (a) if the claim is based on a Transfer Restriction referred to in Section 8 or on Expropriation described in Subsection 9.2 (c), the Guarantee Holder shall assign to Finnvera the Guarantee Holder's right, title and interest in the Local Currency or the Guarantee Currency which constitutes a payment under the Loan Agreement and which was subjected to such Transfer Restriction or Expropriation;
  - (b) if the claim is based on Expropriation described in Subsections 9.2 (a), (b), (d), (e) or (f) or on War and Civil Disturbance referred to in Section 10, the Guarantee Holder shall assign to Finnvera the Loan Agreement and any underlying promissory notes evidencing the Guaranteed Loan, including all their rights, obligations and securities.
- 27.2 Notwithstanding the provisions of Subsection 27.1, the Guarantee Holder need not transfer or assign to Finnvera any right, title or interest in any asset, the value of which is deducted from the compensation under Section 19.
- 27.3 All transfers and assignments under this section shall be made free and clear of any claim, counterclaim, right of set off or other encumbrance.
- 27.4 The Guarantee Holder shall provide Finnvera with all documents and take all other actions necessary which Finnvera may reasonably require for effective completion of the transfers and assignments required by this section.
- 27.5 To the extent that the Guarantee Holder and/or the Project Enterprise for reasons beyond their respective control are unable to effect any transfer or assignment required by this section, the Guarantee Holder shall pursue, and shall use its best efforts consistent with local laws to cause the Project Enterprise to pursue, the rights, claims and interests concerned in accordance with Finnvera's instructions and at Finnvera's expense. In addition, the Guarantee Holder shall promptly pay Finnvera any monies that the Guarantee Holder has received.
- 27.6 If Finnvera and the Guarantee Holder have agreed separately in writing that the transfers and assignments referred to in this section are not made before payment of the claim, the Guarantee Holder must retain his right and title in the assets associated with the Loan Agreement and the Guarantee Event and manage the assets on behalf of Finnvera.

## **28 Transfer and Division of Payments**

- 28.1 Finnvera shall, within fourteen days of the date on which Finnvera has recovered funds subsequent to the payment of compensation, transfer to the Guarantee Holder the funds recovered or received, after first deducting the recovery costs, dividing these funds in the same proportion as Finnvera has paid compensation for the Guaranteed Loan.
- 28.2 The Guarantee Holder shall transfer to Finnvera without any deduction, all funds recovered or received after the payment of compensation, dividing these funds in the same proportion as Finnvera has paid compensation for the Guaranteed Loan. The transfer shall be made within fourteen days of the date on which the Guarantee Holder has received the payment. If the payment has been made to the Guarantee Holder's representative, the Guarantee Holder must prove, if so required, that the transfer of the funds to the Guarantee Holder's account has taken place without delay.

## **Chapter VI. Duties of the Guarantee Holder**

### **29 Provision of Information**

During the Guarantee Period and the next succeeding 24 months, during any period after the Guarantee Period in which the Guarantee Holder has pending a claim, and during a period of three years after the payment of any claim, the Guarantee Holder shall:

- (a) to the extent possible, obtain from the Project Enterprise within 90 days after the close of each financial year of the Project Enterprise copies of its profit and loss statement, balance sheet and other financial statements and economic reports defined by the Guarantee Holder in the Loan Agreement;
- (b) maintain the documents referred to in (a) above for Finnvera;
- (c) promptly notify Finnvera of any material change that the Guarantee Holder has become aware of in relation to the Guaranteed Loan and the Investment Project;
- (d) promptly furnish to Finnvera such information as Finnvera may request bearing a reasonable relationship to the Guaranteed Loan or the Investment Project;
- (e) to the extent possible, permit Finnvera to examine the Project Enterprise's books and property and the Investment Project, and to interview the Project Enterprise's personnel and experts on matters that are materially related to the Guaranteed Loan or the Investment Project.

### **30 Assignability of Rights based on the Investment Guarantee**

Without Finnvera's prior written consent, the Guarantee Holder shall not assign, pledge, give as security, or otherwise relinquish:

(a) any right under the Investment Guarantee;

(b) any right, claim, security or other interest related to the Guaranteed Loan.

### **31 The Guarantee Holder's Self-Risk**

Without Finnvera's written consent, the Guarantee Holder is not entitled to use insurance or security taken out with another insurance or credit institution for covering, or otherwise transferring to a third party, the Guarantee Holder's self-risk portion. Finnvera shall have a special reason for denying such consent.

### **32 The Guarantee Holder's Other Obligations**

- 32.1 The Guarantee Holder shall inform Finnvera, within 14 days after each loan disbursement, of the date and amount of such disbursement, the rate of interest and the repayment schedule.
- 32.2 The Guarantee Holder shall comply with and abide by all laws and regulations of the Host Country with respect to the Guaranteed Loan. In addition, the Guarantee Holder shall exercise due diligence and use its best efforts to cause the Project Enterprise to comply with and abide by all laws and regulations with respect to the Guaranteed Loan and the Investment Project and to comply with the environmental protection laws and regulations that are in force in the Host Country and that have a bearing on the Guaranteed Loan and the Investment Project.
- 32.3 It is the responsibility and obligation of the Guarantee Holder to ensure that, as from the moment of disbursement of the Guaranteed Loan, all documents concerning the Guaranteed Loan and the associated security are binding on the issuers of such documents and do not contain anything that would diminish the liability of the Project Enterprise and the guarantors to make payments, or the value of the security. The Guarantee Holder is also required to ensure that the liability of the Project Enterprise and the guarantors to make payments is unconditional and irrevocable. The Loan Agreement and the associated documents shall not be amended without Finnvera's written consent.
- 32.4 The Guarantee Holder is responsible for ensuring that the Host Government's permits, registrations and corresponding arrangements needed for the Guaranteed Loan and the Investment Project are in force.
- 32.5 The Guarantee Holder shall promptly notify Finnvera of any event or circumstances that could cause or materially increase the likelihood of a Loss and of any defaults (regardless of cause) of payments under the Loan Agreement.
- 32.6 In the event that the event or circumstance referred to in Subsection 32.5, or an actual Loss, occurs, the Guarantee Holder shall take all reasonably available measures, including any measures required by Finnvera, to avert and minimise the Loss and to recover the amounts due.
- 32.7 Irrespective of whether the transfers and assignments referred to in Section 27 have been completed, the Guarantee Holder shall co-operate, and shall use its best efforts to cause the Project Enterprise to co-operate, with Finnvera. If the transfers and assignments referred to in Section 27 have not been completed, the Guarantee Holder shall additionally be committed to recover any amounts due under the Loan

Agreement, and the associated security, on Finnvera's account to the extent that claims have been paid.

## **Chapter VII. Termination and Default**

### **33 Termination by the Guarantee Holder**

The Guarantee Holder may terminate the Investment Guarantee:

- (a) effective on the thirtieth day after the notice of termination;
- (b) as of the date of the Guarantee Holder's notice of termination if:
  - (i) the Project Enterprise or the Guarantee Holder is liquidated, declared bankrupt or becomes subject to corresponding proceedings; or
  - (ii) the Guarantee Holder no longer has an interest in the financing of the Guaranteed Loan.

### **34 Termination by Finnvera**

Finnvera may terminate the Investment Guarantee:

- (a) effective immediately with respect to any funds not withdrawn if, once the Investment Guarantee has become binding on Finnvera, Finnvera becomes aware of a matter that is considered to increase the likelihood of a Loss to a substantial extent;
- (b) effective immediately with respect to the entire Investment Guarantee if the Guarantee Holder has falsely reported or concealed a matter that the Guarantee Holder knew, or should have known, was significant in respect of the handling of the Guarantee application or the cause or amount of a Loss.

### **35 Release of Finnvera from Liability**

35.1 Finnvera shall be released from all liability to pay compensation under the Investment Guarantee, and the Guarantee Holder shall be required to return any amounts paid under the Investment Guarantee, including an annual interest of 16%, and to reimburse Finnvera for any recovery costs and other costs incurred added with an annual interest of 16%, and to compensate Finnvera for any damage resulting by reason of Finnvera's release from liability, if the Guarantee Holder

- (a) has failed to pay the Premiums specified in the Guarantee Agreement;
- (b) has not submitted a claim to Finnvera within the period of 12 months referred to in Subsection 21.1;
- (c) has failed to comply with other terms of the Investment Guarantee and such non-compliance cannot be considered to have only insignificant consequences in respect of the occurrence or degree of a Loss;



- (d) has falsely reported or concealed a matter that the Guarantee Holder knew, or should have known, was significant in respect of the handling of the Guarantee application or the cause or amount of a Loss;
- (e) in some respect that is significant for Finnvera has acted with wilful intent to cause damage, or fraudulently or with gross negligence.

However, if the Guarantee Holder's breach is to be regarded as minor in respect of the degree of culpability or the significance of the negligence, or if releasing Finnvera from its liability would be unreasonable, Finnvera may decide to pay compensation or not to reclaim any compensation already paid, either in full or in part.

35.2 The denial or reclamation of compensation under this Section 35 shall be without prejudice to Finnvera's entitlement to any premiums and other payments owed by the Guarantee Holder to Finnvera under the Guarantee Agreement.

## Appendix

### Definitions

- "Date of Loss" means the date defined in Section 18.
- "Exchange Rate Published by the European Central Bank" means the Euro Foreign Exchange Reference Rate published by the European Central Bank on the date in question. If the date is not a banking day for the European Central Bank, the Euro Foreign Exchange Reference Rate published on the preceding banking day shall be used as the exchange rate.
- "Expropriation" has the meaning assigned to the term in Section 9.
- "Finnvera" means Finnvera plc
- "Guarantee Agreement" means the Guarantee Agreement, together with any amendments made thereto, signed by Finnvera and the Guarantee Holder.
- "Guarantee Currency" means the currency specified in the Guarantee Agreement.
- "Guarantee Event" means the actions or events, as specified in Sections 8, 9 and 10 of these General Conditions, that may lead to a Loss.
- "Guarantee Holder" means the Guarantee Holder, as specified in the Guarantee Agreement, whose loan to the Project Enterprise is guaranteed by means of this Investment Guarantee granted by Finnvera.
- "Guarantee Period" means the period of validity of the guarantee specified in the Guarantee Agreement.

“Guarantee Year”	means a period of 12 months that begins each calendar year on the date when Finnvera signed the Guarantee Agreement.
“Guaranteed Loan”	means the loan investment defined in the Guarantee Agreement, including the loan principal and interest, as well as the costs referred to in the Guarantee Agreement.
“Guaranteed Percentage”	means such percentage of each Loss for which the Guarantee Holder is entitled to compensation under the Investment Guarantee.
“Host Country”	means the country in which the Project Enterprise is located, as specified in the Guarantee Agreement.
“Host Government”	means the present or any succeeding authority exercising centralised governing and legislative authority in the Host Country, or any other public authority in or of the Host Country, on which regulatory powers are conferred by the laws of the Host Country.
“Investment Guarantee”	means these General Conditions together with the Guarantee Agreement.
“Investment Project”	means the project to be undertaken by the Project Enterprise, as specified in the guarantee application, for which the Guarantee Holder grants a loan to the Project Enterprise.
“Loan Agreement”	means the agreement drawn up between the Guarantee Holder and the Project Enterprise and defined in the Guarantee Agreement.
“Local Currency”	means the legal currency of the Host Country.
“Loss”	means any loss for which the Guarantee Holder seeks or may seek compensation under the Investment Guarantee.
“Premium”	means the Premium and handling fee specified in the Guarantee Agreement.
“Project Enterprise”	means the enterprise specified in the Guarantee Agreement, to whom the Guarantee Holder grants a loan.
“Reference Rate of Exchange”	means the rate of exchange defined in Section 20.
“Transfer Restriction”	means the restrictions defined in Section 8.
“War and Civil Disturbance”	has the meaning assigned to the term in Section 10.