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Arrangement on Guidelines for Officially Supported Export Credits

PROJECT FINANCE: UNDERSTANDING ON THE APPLICATION OF FLEXIBILITY TO THE TERMS AND CONDITIONS OF THE ARRANGEMENT ON GUIDELINES FOR OFFICIALLY SUPPORTED EXPORT CREDITS IN RESPECT OF PROJECT FINANCE TRANSACTIONS, FOR A TRIAL PERIOD

This is the agreed Understanding on the Application of Flexibility to the Terms and Conditions of the Arrangement in respect of Project Finance Transactions, for a Trial Period; it comes into effect on the 1st September 1998.

This Understanding will be accessible on the OECD Internet site from the 3rd August 1998 [www.oecd.org/ech/docs/xcr.htm].

This Understanding is subject to formal ratification at Ministerial level within the European Community.

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CHAPTER I: SCOPE

1. Form and Scope of Application

This Understanding, which complements the Arrangement:

- a) sets out the special guidelines for flexibility which will apply to the export of goods and/or services where official support is provided for transactions undertaken on a project finance basis; the Description and Criteria for project finance transactions are set out in Appendix 1;
- b) unless otherwise provided for in this Understanding, the terms of the Arrangement shall apply.

CHAPTER II: PROVISIONS FOR EXPORT CREDITS

2. Repayment of Principal and Maximum Repayment Terms

- a) A Participant may, on a case-by-case basis, agree to flexibility on the timing of the first repayment of principal, the repayment profile and the maximum repayment term provided that the average life¹ of the credit, insurance or guarantee does not exceed either:
 - five-and-a-quarter years; or
 - seven-and-a-quarter years, provided that the first repayment of principal is to be made within two years of the starting point of credit and the maximum repayment term is 14 years.
- b) If flexibility is agreed in accordance with:
 - the first tirect of sub paragraph a) above involving exports to High-Income OECD countries² as defined in Article 22 b) of the Arrangement, official support shall only be provided on the basis of co-financing with financial institutions and where the Participant is a minority partner and has *pari passu* status for at least a significant portion of the life of the credit, insurance or guarantee;

^{1.} The concept of the average life of the credit, insurance or guarantee is based on the time it takes to retire half the weighted principal of the credit, insurance or guarantee. This concept is based solely on the repayment term of the credit, insurance or guarantee and excludes the period before the starting point of credit.

^{2.} For the purpose of this Understanding, Korea is excluded from the list of High-Income OECD countries until 31st March 2002.

- either the first or second tirts of sub paragraph a) above, it is expected that Participants would not agree to a single repayment in excess of 25 per cent of the principal sum repayable during the repayment term.
- c) Flexibility in accordance with the second tirt of sub paragraph a) above shall not be agreed for exports to High-Income OECD countries.

3. Payment of Interest

- a) Interest shall not be capitalised during the repayment period.
- b) If interest is capitalised before the starting point of credit, this shall be notified in accordance with Article 6.

4. Minimum Interest Rates

Where the Participants are providing official financing support:

- a) for repayment terms of up to and including 12 years, the normal CIRR constructed in accordance with Article 16 of the Arrangement shall apply; and
- b) for repayment terms in excess of 12 years and up to 14 years in accordance with the second tirt of Article 2 a) above, a surcharge of 20 basis points on the CIRR shall apply for all currencies. The level of the surcharge shall be reviewed at the end of the trial period referred to in Article 7.

5. Minimum Premium

Although this Understanding shall be effective as from 1st September 1998, the provisions in the Arrangement for minimum premium shall not apply until they come into effect on 1st April 1999. However, between 1st September 1998 and up to and including 31st March 1999, premium will be charged on the basis of the Participants' current systems, enhanced to make them consistent with the average weighted life concept as developed by the Working Group of Experts on Premia and Related Conditions.

CHAPTER III: PROCEDURES

6. Permitted Exceptions: Prior Notification with Explanation

- a) A Participant shall notify all other Participants at least 20 calendar days before issuing any commitment where the intention is to allow flexibility in accordance with Article 2 above.
- b) The notifying Participant would be expected to provide the information required in the Standard Form for Notifications, in accordance with Annex IV of the Arrangement, supplemented to include the additional information set out in Appendix 2.

- c) Although other Participants have the right to seek further information from the notifying Participant over the rationale for and basis of the proposed support, the notifying Participant would be free to issue a commitment at the end of the 20-calendar-day period. It would be expected that the notifying Participant would respond to any questions without delay, whilst recognising the constraints of commercial confidentiality. Where possible, the Participants will provide additional information on the cash flow of projects after contract award (when the export credit agreement and ancillary documents have already become effective).

CHAPTER IV: REVIEW

7. Trial Period and Monitoring

- a) The special guidelines for flexibility shall apply for a Trial Period of three years, i.e. from the 1st September 1998 to the 31st August 2001. After a period of two years (i.e. on or after the 1st September 2000), the Participants shall review the operation of this Understanding to consider the experience gained.
- b) The special guidelines for flexibility shall be discontinued at the end of the trial period unless the Participants agree upon one of the following:
 - to continue the Trial Period, with any necessary enhancements/modifications, or
 - to cement the flexibility in the Arrangement, with any necessary enhancements/modifications.
- c) However, if after two years (i.e. on or after the 1st September 2000), at least seven Participants agree that there is justification, the Trial Period shall continue for an additional one year (i.e. to the 31st August 2002).
- d) In the event that the Trial Period is not extended beyond the 31st August 2001, the Participants shall follow the Arrangement rules for the validity period for export credits.
- e) The Secretariat shall monitor and regularly report on notifications and the use of flexibility in project finance transactions.

APPENDIX 1: DESCRIPTION AND CRITERIA

1. Conforming to both a General Description of and Essential Criteria for project finance transactions could, together with appropriate transparency procedures, be the means to ring-fence any flexibility in the Arrangement to accommodate project finance transactions. The purpose of the Essential Criteria would be to assist decisions on whether or not a specific case could be afforded flexibility.
2. The approach proposed below combines a General Description of project finance transactions together with Essential and Illustrative Criteria. If a Participant considered a transaction which conformed to the General Description and met all Essential Criteria, it would be able to apply the special guidelines for flexibility. It is expected that the Essential Criteria shall be satisfied; in the event that any individual criterion is not satisfied, justification should be provided. The use of this flexibility would require prior notification of the specific transaction to all Participants together with the appropriate “explanation” in accordance with Article 6.

General Description

A financing of a particular economic unit in which a lender is satisfied to consider the cash flows and earnings of that economic unit as the source of funds from which a loan will be repaid and to the assets of the economic unit as collateral for the loan.

Essential Criteria

- Financing of export transactions with an independent (legally and economically) project company, e.g. special purpose company, in respect of “Greenfield” investment projects generating their own revenues.
- Appropriate risk-sharing among the partners of the project, e.g. private or creditworthy public shareholders, exporters, creditors, off-takers, including adequate equity.
- Project cash flow sufficient during the entire repayment period to cover operating costs and debt service for outside funds.
- Priority deduction from project revenues of operating costs and debt service.
- No sovereign repayment guarantee with regard to the project (not including government performance guarantees, e.g. off-take arrangements).
- Asset-based securities for proceeds/assets of the project, e.g. assignments, pledges, proceed accounts.

- Limited or no recourse to the sponsors of the private sector shareholders/sponsors of the project after completion.

Illustrative Criterion

- Hard currency revenues; in the case of local currency revenues, additional securities may be required.

APPENDIX 2: ADDITIONAL INFORMATION FOR NOTIFICATIONS

- Enhanced description of the project.
- Confirmation of conformity with General Description and the Essential Criteria (including comment, if available, on conformity with the Illustrative Criterion).
- A full explanation why more flexible terms are required.
- The date of the first repayment of principal in relation to the starting point of credit, together with details of how this was determined.
- For the purpose of notification of anticipated cash flow patterns, the following template shall be used:

The construction period is ____ years, the repayment period is ____ years for a total term of ____ years. The repayment profile is [front-ended], [back-ended], [variable], [substantially equal], [other, please describe], with ____ per cent of the principal being repaid by the mid-point of the repayment period, and has an average life of ____ years.
- Information on any premium surcharge.
- An explanation of whether interest has been capitalised before the starting point of credit.
- Information on the interest rate charged and the level of surcharge over the CIRR where Article 4 b) applies.