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SPECIFIC RISK INVESTMENT GUARANTY HANDBOOK



*U.S. Government Guaranties
Available for
New American Private Investments
in Foreign
Business Enterprises
Under the
Specific Risk Investment
Guaranty Program*

U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

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Office of Development Finance and Private Enterprise
Department of State
Agency for International Development
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Additional copies of this publication may be obtained from the above address.

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Chapter I

INTRODUCTION

This Handbook describes the procedures and policies of the Specific Risk Investment Guaranty Program of the Agency for International Development. This program insures new investments in less developed friendly countries or areas against losses arising from the specific political risks of inconvertibility of currency, of expropriation, and of damage resulting from war, revolution or insurrection.

The Specific Risk Investment Guaranty Program is authorized by the Congress under the Foreign Assistance Act of 1961, as amended, referred to as FAA (see Appendix B for applicable excerpts of FAA), and is administered by the Agency for International Development. The program is designed to encourage private United States capital and know-how to participate in furthering the economic development and increasing the productive capacities of underdeveloped countries.

This Handbook deals in detail with specific risk guaranties only. Extended risk guaranties and Latin American housing guaranties (FAA, Section 221(b)(2) and Section 224) are not dealt with in this Handbook. These programs and other programs administered by the Agency for International Development for the encouragement and assistance of United States private enterprise in less developed countries are described in a booklet published by A.I.D. entitled Aids to Business. Copies may be obtained from the Office of Development Finance and Private Enterprise, Agency for International Development, Washington, D.C. 20523.

By furnishing coverage against the principal political risks that accompany investments in less developed countries at modest cost, the specific risk guaranty program attempts to increase the participation by United States private enterprise in the growth of the economies of these countries. Increased private investment in these countries augments the production of wealth, expands employment, creates new markets, increases standards of living, and gives new skills to people in areas where such action is badly needed.

The United States Government recognizes the vital role which U.S. business can play in assisting other countries develop towards self-sufficiency. This program is designed to encourage the transfer to less developed countries of the capital and techniques that helped this country to grow and thus assist the objectives of the United States foreign aid program.

The specific risks which may be covered by such guaranties are:

- a. Inability to convert actual profits or earnings or return of the original investment into dollars.
- b. Loss of investment due to expropriation, nationalization, or confiscation by the foreign government.
- c. Damage to or destruction of tangible property attributable to the investment as a result of war, revolution, or insurrection.

By insuring against these political risks, this guaranty program helps eliminate unforeseeable hazards in doing business in unfamiliar areas and tends to equate foreign with domestic investment opportunities.

The Specific Risk Investment Guaranty Program does not offer guaranties against such risks as the devaluation of a foreign currency, the default of a buyer in paying for purchases, the failure of a borrower to repay due to commercial losses, or against other normal business risks that attend any investment. Guaranties will not be issued if the investment would be detrimental to the foreign policy of the United States or the welfare of this country.

Most legitimate long term investments in less developed countries or areas will qualify for specific risk investment guaranties. In order to encourage private investment in all useful forms, the statute and policies have established very broad criteria for coverage. However, to give greater certainty, the coverage rules set forth in this handbook necessarily are in terms of specific exclusions.

The obligations placed upon the investor are those, such as the payment of an annual fee that are necessary to the administration of the program or to maintain eligibility. The operation of the business of the investor and of the business in which he has invested should not be hampered by the guaranty.

Because the program's purpose is to facilitate and increase the participation by private enterprise in the economic development of less developed countries and areas, these guaranties are not available for existing investments or for investments which have been irrevocably committed before an application has been filed with A.I.D. Prior to becoming committed to invest, the investor should apply for an "assurance against prejudice letter" (sometimes called a "waiver letter.") This is normally done by filling out a simple, one-page application form, or by writing a letter containing information about the investment to A.I.D. This "waiver letter" from A.I.D. will allow an investor to continue with his investment plans if he so desires while pursuing his application for a specific risk guaranty.

Guaranties are available for additions, expansions, or modernizations of existing investments, as well as for new investments. It is the project that must be new and not the enterprise in which the investment is made.

Investments may be made in the form of cash or other contributions of value to the foreign concern. There is no restriction upon the size of investments which may be guaranteed. In the past, guaranty contracts have been written covering amounts as low as \$1,000 and as high as \$63,000,000.

The investor must submit an application containing information pertaining to the investment to the Agency for International Development. For eligible investments, a guaranty contract will be issued setting forth the obligations and responsibilities of the investor and the United States Government. Until the guaranty contract is issued, risk of loss rests entirely upon the investor.

With respect to each of the three types of guaranty (convertibility, expropriation or war) desired for his investment, the investor must select both the amount of the investment that he wishes to protect for the forthcoming year ("Current Amount") and a maximum amount to be covered over the entire period of the guaranty contract ("Maximum Amount"). The Maximum Amount is limited by standard rules—generally, 200% of equity investments, and principal plus interest for loan investments. The amount of coverage not at risk (the difference between the Maximum Amount and the Current Amount) is the Standby Amount. A detailed example of the computation of amounts of coverage needed and the fees due is given in Appendix D.

An annual fee is charged for the guaranty: one-quarter of one percent ($\frac{1}{4}\%$) for convertibility coverage and one-half of one percent ($\frac{1}{2}\%$) each for expropriation coverage and war, revolution or insurrection coverage or seven-eighths of one percent ($\frac{7}{8}\%$) for the combined expropriation and war, revolution and insurrection coverage, plus one-tenth of one percent ($\frac{1}{10}\%$) of the standby amount for each of the coverages.

The contracts of guaranty represent an obligation backed by the full faith and credit of the Government of the United States of America, as provided in Section 222(e) of the FAA. This pledges the general credit of the United States Government to pay losses to the full extent of the guaranty contract. An existing reserve is available for immediate payment of losses without requiring any further Congressional appropriation. This reserve was over \$290 million as of May 31, 1966.

Guaranty contracts for equity investment will ordinarily be written for a maximum term of 20 years from the date of issuance, while guaranty contracts for loans may be written for the term of the loan. The contracts may be terminated by the Investor at the end of any contract period upon appropriate notice. A.I.D. has the right to terminate only upon a breach of certain representations by or obligations of the Investor.

Note: The policies and procedures expressed in this handbook are those in effect at the time of its issuance. These policies and procedures are subject to change because of changes in the governing statute or experience. Many of the policies expressed in this handbook are explained in greater detail in written policy directives available from the Specific Risk Guaranty Division.

Chapter II

ELIGIBLE INVESTMENTS

1. PARTICIPATING COUNTRIES

(a) Bilateral investment guaranty agreements.

Before guaranties can be issued for investments in any particular country, the United States and the foreign government must enter into an agreement for the institution of the guaranty program. The purpose of this agreement is to provide, in advance, orderly procedures for the handling of claims between governments, the transfer of foreign currencies, and other matters that are likely to arise between the two governments during the administration of the guaranty program.

Guaranty agreements have been signed with more than 75 developing countries. Guaranties are also available in a number of the overseas dependencies of developed nations. In some of these countries and dependencies the agreement to institute the program does not permit guaranties against all three risks. When less than complete coverage is offered in a country, an investor may still note in its application all coverages desired, and the right to receive the additional coverages will be preserved in the event that such additional coverages become retroactively available.

Negotiations are continuing with countries not now in the guaranty program, as well as with those that have agreed to less than all three coverages, and the scope of the program should continue to widen. In countries where a new investment guaranty agreement may be imminent, assurance against prejudice letters may be issued for proposed investments even though the program is not presently available. Guaranty coverage will then be available to eligible investments if the necessary agreement with the foreign government is subsequently made, and it becomes possible under that agreement for A.I.D. to issue guaranty coverage for such an investment.

Announcements of the entrance of new countries into the program or of the availability of additional coverage in a country are given to the press and are generally available. Requests for updated country lists, as well as inquiries concerning the status of specific countries or dependencies, should be addressed to the Specific Risk Guaranties Division, Agency for International Development, Washington, D. C. 20523.

A list of the countries participating in the program as of September, 1966, is found in Appendix E. Revised lists are prepared and made available as changes occur.

(b) Foreign Government Approval.

Before a guaranty contract can be issued, each specific project in which an investment is made must be approved for guaranty purposes

by the appropriate department of the foreign government. (See Chapter VI, How to Proceed.)

(c) Information Concerning Investments in Foreign Countries.

Background information can frequently be obtained through diplomatic and consular offices of foreign governments located in various cities in the United States. The U.S. Department of Commerce also issues many general and specialized publications on market research, trade trends, operational problems, and the investment climate in various countries. These may be obtained from the Sales and Distribution Division of the Department of Commerce or the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. 20402. Personalized service on these subjects is furnished by the Department of Commerce and all of its Field Offices throughout the country.

Prospective investors frequently have found it useful to discuss their investment plans with A.I.D. to obtain advice and information on questions concerning the program and the preparation of applications.

2. PERSONS AND ORGANIZATIONS ELIGIBLE

In order to be eligible for guaranties, the investment must be made by:

- (1) a citizen of the United States, or
- (2) A corporation, partnership, or other association, created under the laws of the United States or of any state or territory of the United States, which is substantially beneficially owned by citizens of the United States, or
- (3) any wholly owned (as defined in section 223(c) FAA) foreign business owned by one or more of the investors eligible under (1) or (2) above.

Ordinarily, a corporation organized under the laws of the United States or of any state or territory of the United States will be considered substantially beneficially owned by United States citizens if a majority of each class of its issued and outstanding stock is owned by United States citizens either directly or beneficially. For the purposes of this determination, shares of stock of corporations with widely dispersed public ownership (such as corporations whose stock is traded on a national stock exchange) that are held in the name of trustees or nominees (such as stock brokerage firms) with addresses in the United States may be deemed to be owned by United States citizens, unless the Investor knows the contrary.

Even if the above eligibility tests are met, a corporate investor may be deemed ineligible if the corporation owes an unusually heavy debt to non-United States citizens (normally in excess of 400% of the net worth of the corporation) or if it appears from all the circumstances that the foreign creditors can exercise effective control over the corporation.

The eligibility of a corporate investor incorporated under the laws of the United States, or any of its states or territories, which

is owned in whole or in part by another corporation wherever incorporated, is determined by applying the eligibility tests described in the preceding paragraphs to the ultimate beneficial owners.

Example: A Corp., a U.S. corporation, desires investment guaranties. The entire stock of A Corp. is owned by a Canadian corporation, B Corp. If over 50% of each class of stock of B Corp. is beneficially owned by United States citizens, A Corp. will be eligible for guaranty coverage.

A foreign company will be deemed wholly owned by United States investors even though some of the foreign company's equity is held by persons other than United States investors, if such outside ownership is required by applicable foreign laws and in aggregate less than 5% of the total capital (see section 223(c), FAA).

When a group of eligible investors with similar interests in the same project desire guaranty coverage, or on other occasions, guaranty coverage may be sought for investments held by nominees. An otherwise eligible investor may receive guaranty coverage for shares held in someone else's name under the following conditions: (a) the shares are held in the name of nominees for the exclusive use and benefit of the investor; and (b) the shares must have been acquired with funds supplied by the investor. Thus, for example, when these conditions have been met, an investor-corporation may secure guaranty coverage of shares held by directors or by incorporators. However, compensation under such guaranties for losses is conditioned upon the investor being able to cause the nominee holding those shares to make the assignment to the United States Government called for by the guaranty contract after the losses have been incurred.

3. THE INVESTMENT MUST BE NEW

The statutory purpose of the guaranty program is to facilitate and increase United States private investment in order to further the development of the economic resources and productive capacities of less developed friendly countries and areas. The United States would not achieve this purpose if it merely sold insurance on existing investment. Thus, generally speaking, new funds must be invested in a new project to be eligible for guaranties.

The new project, however, may also be the expansion, modernization, or development of an existing enterprise. Thus, new, convertible funds will be eligible for guaranties if used for such purposes as the construction of additional productive facilities to an existing plant, the modernization of existing productive facilities by construction of a new, more efficient plant to replace an old inefficient one, or for additional working capital to accommodate a greatly expanded business.

Generally, acquisition of an interest in an existing enterprise will not be given guaranty coverage. Investments are also not eligible for guaranty coverage if used directly to free other funds for the redemption of stock or for the repayment of loans except in the circumstances outlined later in this chapter.

In some circumstances, purchases of an existing interest in an operating foreign concern (not a subsidiary or affiliate of the investor) may be eligible for coverage. When an investment in a foreign enterprise consists of new contributions of capital for the purpose of expanding, modernizing, or developing the foreign concern, and in conjunction with such investment the investor acquires an existing interest in the foreign enterprise, the existing interest may be covered along with the new interest. Only that amount of the existing investment that is at least equal to the amount of the new investment may be covered.

An investment in farm lands, herds of farm animals, and/or inventory of agricultural produce prior to first processing will be considered eligible for coverage if; (a) the investor is able to show a plan of improvement of the existing enterprise which will result in the expansion, modernization or improvement of the existing enterprise; (b) there is to be new investment in an amount not so insubstantial as to be irrelevant; (c) the investor intends to be involved in the operation of the enterprise.

In order that the investment qualify as new, applications for guaranty coverage must be made prior to commitment of the investment. An investor should protect himself against ineligibility because the investment is not new by applying for an A.I.D. assurance against prejudice letter before he has irrevocably committed his investment. (See Chapter VI, How to Proceed.)

4. TYPE OF INVESTMENT TRANSACTION.

There is no fixed form which an investment must take to be eligible for coverage. However, generally speaking, it must be intended that the investment remain in the foreign enterprise for a period of three years or more in order to be eligible for coverage. Some of the types are the following:

(a) **Equity:** An equity investment may take many forms: the purchase of stock (all or part of the stock of a foreign enterprise); a partnership or joint venture arrangement; the establishment of a branch operation; or other proprietary investment in a business entity established under local law. An investment arrangement which may contemplate early disposition of the investor's interest can be presented to AID for consideration as to eligibility. Advance arrangements for redemption of stock will be treated as if the investment were a loan.

(b) **Loan:** The investment may be in the form of a loan. The obligation may be evidenced by any valid type of loan instrument, expressed either in dollars or in other currency convertible at the time of the guaranty contract, and either secured or unsecured. The term of the loan from the date of drawdown to the date of repayment must be three years or more. In the case of a serial loan or loan repaid in a number of installments, the average maturity of the entire loan calculated from the date or dates of drawdown must not be less than three years. Such short-term commercial credit arrangements as

revolving lines of credit or ninety-day open accounts are not eligible for guaranty coverage.

A construction loan for the construction of a housing project for which the long-term financing is guaranteed by A.I.D. under the Housing Guaranty Program may be eligible for investment guaranties whatever the duration of the construction loan. This special exception is made because of the close connection between the short and the long-term investments.

Refinancing existing indebtedness will not ordinarily qualify as the type of investment which may be covered by a guaranty because it is the exchange of an existing interest in a foreign enterprise for another. However, a new loan for the purpose of refinancing existing debt of the foreign enterprise will be eligible if the average maturity of the new loan is at least six years and if the debt being refinanced has already matured or will mature within one year of the making of the new loan.

A loan with an average maturity of at least three years, but which can be called by the investor at any time, is not eligible for guaranties. On the other hand, a loan is not ineligible because the borrower has an option to prepay the principal of the loan (except where the borrower is a subsidiary of the investor or otherwise under its control) or because the loan contains a clause allowing acceleration of payments so long as there are reasonable default criteria.

An Investor's guaranty of an outside loan extended to the Foreign Enterprise may be eligible for guaranty coverage to protect the Investor's contingent liability if the underlying loan would be eligible except that the actual lender is ineligible.

The average maturity of a serial loan, determined without regard to payments of interest, is calculated in accordance with the following formula:

$$\text{Average maturity} = \frac{\sum n \text{ times } i}{\sum i}$$

n == number of months (or years or other uniform unit of time) from drawdown to repayment of any installment of the loan.

i == amount of corresponding installment

Σ means "sum of"

Example: The investor extends a loan of \$2,000,000 at 6% interest on the unpaid principal to the borrower. The principal must be repaid at the end of the indicated number of years from drawdown according to the following schedule:

<u>Years</u>	<u>Amounts</u>
1	\$300,000
2	\$300,000
3	\$400,000
4	\$500,000
5	\$500,000

Applying these facts to the formula :

n	i	n times i
1	\$300,000	\$ 300,000
2	300,000	600,000
3	400,000	1,200,000
4	500,000	2,000,000
5	500,000	2,500,000
Σ	\$2,000,000	\$6,600,000

$$\frac{\Sigma n \text{ times } i}{\Sigma i} = \frac{\$6,600,000}{2,000,000} = 3.3 \text{ years}$$

The loan is eligible for guaranty coverage because the average maturity under this formula is over three years.

The rate of interest on a loan must be reasonable in light of legally prevailing rates for comparable loans in the foreign country.

(c) *Licensing of Patents, Processes, or Techniques, and Technical Assistance Agreements:* Guaranties against inconvertibility but not against expropriation or war, revolution or insurrection are issued to cover an investment in the form of a licensing agreement for the use of patents, processes, and techniques in exchange for royalty payments. Arrangements by which, for a fee, the investor provides engineering, architectural, and managerial services and similar services may also be covered by guaranties. Ordinarily, however, an agreement calling for payments of royalties or fees will not be eligible for guaranties unless the investment is intended to extend for at least five years.

(d) *Construction Contract:* The investment of a United States contractor may be eligible for guaranties under certain circumstances. Construction companies desiring coverage should contact the Specific Risk Guaranties Division for further information concerning eligibility requirements.

(e) *Long-Term Supplier's Credit:* The extension of long-term credit by a supplier of equipment or commodities may be eligible for guaranties when the extension of credit is tantamount to the making of a loan and the sale of goods has a significant developmental impact. The average maturity of the credit, like the comparable rule for loans, must be at least three years. Guaranties will not ordinarily be issued when substantially equivalent protection is available from the Export-Import Bank or from the Foreign Credit Insurance Association.

5. NATURE OF INVESTMENT CONTRIBUTION

An eligible investment contribution may be any one or more of the following:

(a) *Cash:* Investments made in United States dollars, or in credits of United States dollars, or in foreign currency purchased with United States dollars for the purpose of the investment, are eligible for guaranties. Investments made in the local currency of the country where the project is situated, or in any other foreign currency, are eligible for

guaranties if that currency is freely transferable into United States dollars at the time of investment.

If the local currency of the country where the project is situated is not freely transferable into United States dollars, investments made in the local currency may still be eligible for guaranties if all of the following conditions are met: (a) the investor is making some significant contribution to the project in addition to his contribution in the local currency, (b) the host government has indicated that it will permit the transfer into dollars of earnings and capital attributable to the entire investment, including the portion attributable to the local currency, and (c) either the host government has specifically agreed to convert the local currency contribution for use in meeting the foreign exchange costs of the project or the local currency is used to cover the local currency costs of the project.

(b) *Retained Earnings*: Reinvestment of earnings of a foreign enterprise in connection with a new project or a project of expansion, modernization, or development is eligible for guaranty coverage, if the funds invested in the project could have been repatriated to the United States under the exchange control regulations of the host country existing at the time of the investment in the project. With a few limited exceptions, guaranty coverage is available only with regard to retained earnings accrued out of normal operations in a period starting two years prior to the beginning of the fiscal year of the Foreign Enterprise in which an AID waiver letter is issued and ending on the last day of the fiscal year of the Foreign Enterprise in which the new project is substantially completed. In every case, the foreign enterprise must either capitalize the earnings covered by guaranties (decrease its earned surplus account, make a corresponding increase in the capital account and issue an appropriate number of shares), or segregate the earnings covered by guaranties in a separate reserve in accordance with certain established rules so that such earnings are not available for dividends.

As is necessary for other types of investment, a project approval from the host government will be required for coverage of reinvested earnings. The application for a foreign government approval must clearly state the extent to which the project is being financed by retained earnings.

(c) *Materials or Equipment*: Both new and used materials or equipment are eligible as investment contributions. Such material or equipment will be valued at the lesser of either the value agreed upon between the investor and the foreign concern or its reasonable value in the United States plus whatever transportation, insurance, installation, and related costs are actually borne by the investor.

When the investor's investment in the foreign enterprise consists in whole or in part of contributions of used machinery or equipment, the investor will not necessarily be required to secure an independent appraisal of the machinery or equipment. Rather, A.I.D. may grant coverage upon a certification by the investor that the machinery or equipment is worth a particular dollar amount and the basis on which the valuation was made, if the basis of the valuation appears reasonable.

(Note: Such valuation shall not exceed the fair market value of the goods plus certain transportation costs, etc., as specified in sections 1.03 and 1.22 of the standard contract, General Terms and Conditions.)

(d) *Patents Processes and Techniques*: Investments in the form of contributions of patents, processes, industrial techniques, or licenses for this use, are eligible for guaranties, but only if they represent a body of information and experience that is predominantly already in existence. Congress has specifically included these intangible assets in the investment guaranty program to encourage the spread of advanced technological methods. Trade names, trade marks, and good will, while often closely associated with the licensing of patents, processes, and techniques, are not eligible for guaranties. The licensing of the names and trade-marks will not prohibit coverage of the total investment if shown to be only a minor part of the transaction.

(e) *Services*: Contributions of services, e.g., engineering and management services, will be eligible for guaranties when contributed for an equity interest or a long term loan.

An agreement with the foreign enterprise to provide such services for current payment is not eligible for guaranty.

(f) *Loan Guaranties*: A guaranty of the repayment obligations of a foreign enterprise to a third party will be eligible for coverage only if the loan guaranteed is eligible under the investment guaranty program criteria except for the nationality of the lender. Application for a waiver letter must be made in all cases prior to execution of the agreement governing the transaction.

For example, if the Foreign Enterprise were to obtain a loan from a bank or other local institution and the Investor were to guarantee repayment of the loan, the Investor could obtain a specific risk guaranty to cover the contingency of his being required to fulfill his guaranty after a default due to one of the three political risks.

Investment guaranties will not be issued to cover an investor's guaranty to repay a "Cooley" loan of local currency to the U.S. Government (made under P.L. 480) primarily because: (a) the "Cooley" loan agreement between the foreign enterprise and the United States Government ordinarily will contain language relieving the guarantor of his obligation if the default of the foreign enterprise is due to political risks, and (b) the "Cooley" loan funds are often not convertible.

6. GROUNDS FOR INELIGIBILITY OF INVESTMENTS

Most types of investments which are not of a short-term nature will qualify for specific risk investment guaranties. A few kinds of investment, however, are not eligible. Even in some of these cases, there may be overbalancing reasons for going ahead if there is a sufficient advantage to United States policy objectives. A useful checklist, my way of example, setting forth common reasons for ineligibility is found in Appendix F.

(1) *Investments with economic benefit to the foreign country*. The FAA declares that the purpose of the Specific Risk Investment Guaranty Program is "to facilitate and increase the participation of private enterprise in furthering the development of the economic resources and productive capacities of less developed friendly countries

and areas." In accordance with this declared policy, guaranties will be issued for investments in projects that will be of net economic benefit to the foreign country.

Projects which promote trade, provide economic development, increase production, raise standards of living, reduce dependence upon imports, or improve technical efficiency will be eligible.

(2) *Foreign Government Participation*: Because a significant objective of the Investment Guaranty Program is to encourage the development of the private sector of the host country's economy, investments in projects in which the host/foreign government is participating raise special problems. In general, an investment—whether equity, loan, or some other form—in a foreign enterprise in which the host government has a minority interest with respect to both ownership and control normally does not become ineligible by that fact. When the host government has a greater than 50% ownership interest in the foreign enterprise or can exercise effective control over the foreign enterprise, guaranties of restricted scope are available only if there are reasonable arrangements for participation by private enterprise. Factors that will be considered in making this judgment include: the extent to which the management of the enterprise has been entrusted to private persons through such devices as long-term management contracts, the total extent of private participation in the project, and whether the presence of private interests in the project promises to lead to further private investment in the project or to the development of the private sector of the host country's economy. When the host government has control of the foreign enterprise, the guaranty contract will not protect the eligible investors from actions of the host government which are normal incidents of its controlling interest.

The Investment Guaranty Program was not intended to insure the credit or solvency of foreign governments. For this reason, loans to foreign governments, or contributions of goods and services for which the investor receives an obligation of the foreign government to pay money, will not be eligible for guaranty coverage. Furthermore, arrangements which have the same effect will also be ineligible.

(3) *U.S. Balance of Payments Effect*: By specific Congressional directive, every investment for which guaranties are issued must be examined for its probable effects on the United States balance of payments. When substantially all of the investment is to be used for procurement in other developed countries, the investment will not be eligible for guaranties unless: (a) the total amount of the investment is under \$100,000, (b) the total amount of the investment is under \$500,000 and the investor is contributing substantial management skills or technical know-how, (c) the products being procured cannot be obtained inside the United States or are of a type of which the United States is a net importer, or (d) the investor can demonstrate that there is some other valid reason that outweighs the adverse effect on the United States balance of payments, or (e) the invested funds are raised in another developed country or in a less developed country either by means of a capital issue or bank borrowing and the investor represents to AID that the funds so obtained will be used for the

procurement involved; or (f) the goods or services procured are paid for partially by convertible funds provided by a foreign partner in the investment, which funds have been commingled with those contributed by the U.S. investor and there is some procurement for the whole investment in the host country or another less developed country; or (g) the investment is made by a bank in a foreign branch or in a foreign bank or in other financial institutions, either directly or through Edge Act subsidiaries.

This policy is subject to change; investors planning to use the proceeds of an investment to procure goods in other developed countries should review the matter with A.I.D. in advance of investment if they wish to be assured of eligibility under this requirement.

7. FLEXIBILITY OF ADMINISTRATION

The statute establishing the Specific Risk Investment Guaranty Program allows flexibility of administration. If guaranty coverage is desired, unusual cases should be discussed with the Specific Risk Guaranties Division before any commitment to invest is made.

Chapter III

CONVERTIBILITY GUARANTY

1. NATURE OF PROTECTION

Many investors in less developed countries are seriously concerned that the host government or the central banking authorities will prevent them from converting the dividend, interest, principal, or other payments arising out of their investment into United States dollars. To alleviate this concern, the convertibility guaranty assures the investor that, if there is a means available at the time the guaranty contract is executed for converting these local currency payments into dollars, such local currency will continue to be convertible into dollars for the duration of the contract by equivalent means.

The convertibility guaranty which covers both earnings on the investment and the return of the investment where not held by the Investor for more than eighteen months, may be invoked in three situations:

- a. when the investor is prevented from converting his local currency into United States dollars for a period of thirty days by direct operation of any law, decree, regulation, or affirmative administrative determination (i.e., outright blockage);
- b. when the investor is prevented from converting his local currency into United States dollars by the failure for a specified number of days (not less than 60) of the applicable government authorities to grant a duly submitted application for transfer (i.e., passive blockage achieved through governmental inaction);
- c. when the investor is permitted to convert his local currency into United States dollars, but only at a discriminatory rate of exchange which is less than 99% of the rate of exchange that would be used to convert such local currency under the guaranty (i.e., permission to transfer only at discriminatory rate).

In these situations, the United States Government will pay the investor in dollars a sum equal to 99% of the dollar equivalent of his inconvertible local currency. The investor must transfer such local currency to the United States Government.

Prospective investors should note what the convertibility guaranty does *not* cover. The convertibility guaranty does not itself afford any protection against the effects of currency devaluation and inflation. In countries with multiple exchange rate systems, the convertibility guaranty will ordinarily offer protection only against blockage of all of the legally recognized exchange rates.

Moreover, the investor may not invoke the guaranty because of the effect of any exchange regulation or practice that was in effect at the time of the execution of the guaranty contract. One of these practices

involves passage blockage as a result of time delays. Coverage against passive blockage is based upon the longest normal processing time for transfer of applications at the time the guaranty contract was executed. The total time of passive blockage covered against will not be less than sixty days, and may be longer.

The convertibility guaranty will not ordinarily be issued if it seems clear at the time of issuance of the guaranty contract that local currency used for transfer of earnings or remission of capital is not convertible at all under the prevailing exchange regulations or practices. However, the burden of ascertaining whether or not any convertibility exists remains with the applicant. Special conversion rights from the host government may justify issuance of the guaranty even if local currency is generally inconvertible, but only if such rights are in effect on the effective date of the guaranty contract.

2. FOREIGN EXCHANGE RATES

If a loss occurs, the United States Government will pay the investor 99% of the United States dollar equivalent of the inconvertible local currency. The 1% margin is to allow for fluctuations in the applicable exchange rate and for ordinary expenses, usually borne by investors transferring local currency into United States dollars, such as transfer commissions, mail or cable transfer charges, and transaction stamp taxes.

Where possible, the dollar equivalent of the inconvertible local currency is calculated on the basis of the effective free market rate of exchange. If there is no effective free market rate of exchange, then reference is made to the rate of exchange at which other United States investors without special arrangements for the remittance of such amounts purchase United States dollars for local currency for the remittance of earnings or capital or servicing of United States dollar debt. As a final alternative, reference is made to the most depreciated effective rate of exchange recognized by the foreign country and applicable to at least 10% of the exchange transactions for the purpose of importing goods into the foreign country. (See section 1.33 of the standard guaranty contract, General Terms and Conditions).

3. MAXIMUM AMOUNT AND CURRENT AMOUNT OF PROTECTION

Under a convertibility guaranty, as under all coverages of specific risk investment guaranties, the investor must select both a maximum amount of coverage and a current amount of coverage. The current amount is the total protection in effect during any one contract year. The maximum amount sets the upper limit of protection that the investor can select during the life of the guaranty contract.

With one exception, the maximum amount for any coverage, once selected, may never be increased for the duration of the contract. The exception occurs if an investor receives a guaranty contract prior to the completion of his investment and if the amount of investment for the project thereafter changes because of an increase in costs or amounts to be invested by other investors, an amendment will be made allowing

an increase or decrease in maximum amount. The investor may elect to decrease the maximum amount at the end of any contract period upon giving appropriate notice; it is automatically and permanently decreased, however, in the amount of any compensation paid under the guaranty. Compensation paid under the guaranty will also reduce the current amount by the amount of compensation paid for that contract period. However, invoking the guaranty in one year will not impair the investor's right to select a different current amount in later years up to the maximum amount then in force.

Ordinarily, an investor is not permitted to select a maximum amount that exceeds certain limits which depend upon the type of investment. The current amount selected by the investor should reflect the amount at risk during that contract period, up to the limit marked by the maximum amount.

Equity: The largest maximum amount that may ordinarily be selected for an equity investment is an amount equal to 200% of the dollar amount of the initial investment. The additional 100% over the original investment is to allow coverage of accumulated earnings up to the amount of the original investment. The current amount an investor will normally want to designate for any contract period will be the sum of the dividends and the return of capital that he expects to receive from his investment during that contract period.

Loan: The maximum that can be guaranteed for a loan investment is the amount (stated in dollars) of the principal plus the total interest. The current amount selected will normally be the sum of the payments of interest and principal that the investor expects to receive during that contract period.

Combined Equity and Loan: If the investment consists of both an equity investment and a loan investment, the investor will select one maximum amount and one current amount to cover his entire investment. Ordinarily, the maximum amount will be a figure equal to the sum of 200% of the dollar amount of the initial equity investment plus the principal of the loan plus the total interest. However, when the ratio of debt investment and equity investment exceeds 5 to 1, A.I.D. may require a lesser maximum amount. The current amount that an investor will want to select will normally be the sum of the dividends and return of capital plus the sum of the payments of principal and interest which he expects to receive during the contract period. Although it will not be necessary to specify in the contract which portion of the maximum amount or the current amount is attributable to debt and which to equity, it will be necessary to delineate the exact nature of the investment for the purpose of the definition of the investment. As a result of combining both the debt and equity investments into one maximum and one current amount representing the total investment, the investor will obtain a coverage of his equity investment in excess of 200% as his debt is repaid.

Licensing and Technical Assistance Agreements: The largest maximum amount for a licensing or technical assistance agreement is the sum (stated in dollars) of the royalty payments or fees which can reasonably be expected over the life of the license or technical assist-

ance agreement. The investor must establish the reasonableness of the royalty rate or fee and his estimate of the total payments. The current amount that is selected should normally be the amount of royalty payments or fees that the investor expects to receive during that contract period.

4. COST OF CONVERTIBILITY GUARANTY

The investor must pay a fee of one-quarter of one percent ($\frac{1}{4}\%$) per year of the current amount of the contract. In addition, a standby fee of one-tenth of one percent ($\frac{1}{10}\%$) is charged annually on the difference between the current amount and the maximum amount. The annual cost of the convertibility guaranty, payable in advance, is the sum of these two fees.

Illustration of Computation of Fee:

Prior to 1967 the U.S. Co. an eligible investor invests \$50,000 in equity shares in a new foreign enterprise, the LDC Corp., doing business in a less developed country; the U.S. Co. was issued a convertibility guaranty with a maximum amount of \$100,000. For 1967, the U.S. Co. estimates that only \$5,000 of local currency earnings from the LDC Corp. will be paid as dividends; it therefore requests only \$5,000 of current coverage for 1967. The other \$95,000 of his maximum \$100,000 of coverage will be kept on a standby basis for possible use in later years. The U.S. Co.'s fee for 1967 is computed as follows:

	Amount	Rate	Fee
Current amount of guaranty for 1967	\$5,000	$\frac{1}{4}\%$	\$ 12.50
Amount by which the maximum amount exceeds the current amount for 1967 (the "standby" amount)	\$95,000	$\frac{1}{10}\%$	\$ 95.00
Fee for 1967			<u>\$107.50</u>

In 1981, the U.S. Co. decides that in 1982 it will sell its shares in LDC Corp. to a businessman in the foreign country and convert the proceeds into dollars. Because of the profitable nature of the business and the reinvestment of its earnings, the U.S. Co.'s interest in the LDC Corp. has risen to \$100,000. The U.S. Co. requests \$100,000 in current amount (no convertibility losses occurred prior to that date). The fee is computed as follows:

	Amount	Rate	Fee
Current amount of guaranty for 1982	\$100,000	$\frac{1}{4}\%$	\$250.00
Standby amount	0	$\frac{1}{10}\%$	\$ 0
Fee for 1982			<u>\$250.00</u>

Chapter IV

EXPROPRIATION GUARANTY

1. NATURE OF PROTECTION

The Specific Risk Investment Guaranty Program offers protection for United States investors against losses due to expropriation, confiscation, or nationalization of their property by the host foreign government or any of its subdivisions or agencies.

If a government expropriates, confiscates or nationalizes property of a foreign investor, in most circumstances the government has a duty under established principles of international law to offer prompt, adequate, and effective compensation. However, the compensation, if offered at all, may be unsatisfactory to the investor because of delay, litigation expense, the form of payment, or inadequacy of amount. By means of an expropriation guaranty, an investor may assure himself that he will be compensated in dollars by the United States Government for the loss of his investment occasioned by expropriatory actions of the foreign government. In return for payment of compensation, the investor will ordinarily be required to assign to the United States Government all of his remaining interest in the investment. However, if the United States Government subsequently realizes a greater recovery than was paid to the investor as compensation plus related recovery costs, the excess will be paid to the investor.

The precise nature of the protection varies with the form of the investment. Generally, a taking of property by a foreign government is expropriatory action if it lasts for one year and is for the express purpose of nationalization, or is discriminatory against the investor or against foreigners, or bears no reasonable relationship to any reasonable regulatory or fiscal policy of the government, or violates generally accepted principles of international law.

Equity: Subject to the limitations mentioned below, expropriation will be deemed to have occurred in equity investments if the foreign government prevents:

- a. the foreign enterprise in which the investment was made from exercising effective control over a substantial portion of its property or prevents the continued operation of the economic activity of the foreign enterprise; or
- b. the investor from exercising his fundamental rights acquired by reason of his ownership of equity shares; or
- c. the investor from receiving payment of dividends that have been declared by the foreign enterprise, from disposing of his equity shares, or from withdrawing from the foreign country money received either from the foreign enterprise as dividend or liquidation payments or as the proceeds of the sale of the equity shares.

In certain circumstances, the definition of expropriatory action will be extended to include government action taken against a subsidiary or affiliate of the foreign enterprise (but not directly against the foreign enterprise) when the result of the government action is to destroy the value of the foreign enterprise as a going concern. This extension will be made only when the following conditions are met: (1) the business activity of the subsidiary or affiliate is economically integrated with the business operations of the foreign enterprise, and (2) if a subsidiary, the foreign enterprise holds a majority interest in it and exercises effective control over it, or if an affiliate, both it and the foreign enterprise are under the common ownership of the U.S. investor.

The definition of expropriatory action may in some circumstances include a breach by the foreign government of a concession agreement which it has made with the foreign enterprise. However, in this situation, or in connection with other contracts with foreign governments, the definition of expropriation would not include the failure of the government to pay for goods or services delivered to it pursuant to the investment guaranty policy of not guaranteeing the credit or solvency of foreign governments. Furthermore, promises of a government of a commercial nature or requiring positive governmental action (e.g., deliver a certain amount of electric power) will not normally be covered.

Loan: In loan investments, but subject to the same limitations below, expropriation will be deemed to have occurred if the foreign government prevents:

- a. The investor from receiving payments of principal and interest when due, or from withdrawing from the foreign country money received as such payments, or
- b. The investor from disposing of his debt instrument, or from withdrawing money received as the proceeds of the sale of the loan instrument from the foreign country, or
- c. The foreign enterprise (to which the loan was made) from exercising effective control over a substantial portion of its property, or prevents the continued operation of the economic activity of the foreign enterprise.

Limitations and Examples: Generally speaking, indirect actions of a foreign government will be considered expropriatory action so long as those actions directly result in the type of interference described above. Regulatory or revenue producing activities of the foreign government are considered expropriatory if such actions are discriminatory against the investor or against foreigners, or if the taxation or regulation is not reasonably related to the constitutionally sanctioned objectives of the foreign government or violates generally accepted principles of international law.

Expropriation will not be deemed to have occurred if the expropriatory action of the government was allowed by any voluntary agreement between the government and either the investor or the foreign enterprise, or resulted from any provocation or instigation by either the investor or the foreign enterprise, or the loss resulted from the failure

of either the investor or the foreign enterprise to take reasonable measures to prevent the government action, including proceeding under available administrative or judicial procedures in the foreign country.

The expropriation guaranty will not protect the investor from bona fide exchange control actions. General speaking, exchange control actions are encompassed under the convertibility guaranty—the expropriation guaranty being in part supplemental to, and not a substitute for, the convertibility guaranty.

Illustrations of the definition of the government action insured against are: (i) taxes which are levied upon a foreign enterprise equal to the value of the enterprise, (ii) a substantial interference in an investor's right of participation in the affairs of the enterprise, e.g., the government decrees that the managerial control over the enterprise shall thereafter be in the hands of some person or body other than that duly chosen by the owners of the enterprise, (iii) demand that the foreign enterprise conduct its operations in a fashion wholly inimical to United States policy, e.g., the government requires a plant to sell its output to a foreign country at war with the United States.

An offer to pay compensation by the host government would not prevent the operation of the guaranty in these situations. On the other hand, an investor may not invoke the guaranty when subjected to a non-discriminatory increase in taxation, or to a nondiscriminatory regulatory measure (except outright nationalization itself) that is reasonably related to valid regulatory purposes, despite any adverse effects of these measures upon the profitability of the investor's enterprise.

2. MAXIMUM AMOUNT AND CURRENT AMOUNT OF PROTECTION

As with the other types of guaranties, the investor must select a maximum amount and a current amount of the guaranty. The current amount of the guaranty represents the amount of protection in force for a given contract period and may be changed from year to year. The maximum amount, the limit beyond which the current amount may not go, can only be decreased; it cannot be increased.

Equity: For equity investments, the maximum amount of the guaranty generally may not exceed 200% of the dollar amount of the investment. The extra 100% is to provide coverage for future earnings that may be retained in the business.

The normal current amount for equity investments for any year will be the dollar amount of the initial investment less any previous repatriations of the investment and further adjusted upward for earnings retained in the enterprise or downward for losses.

Loans: For loan investments, the maximum amount of the guaranty may not exceed the sum of the principal amount and all interest payments called for by the debt instrument. The current amount will normally be the amount of unpaid principal at the beginning of the contract period plus the amount of interest due during that contract period.

Combined Equity and Loan: If the investment consists of both an equity investment and a loan investment, the investor will select one maximum amount and one current amount to cover his entire investment. Ordinarily, the maximum amount will be a figure equal to the sum of 200% of the dollar amount of the initial equity investment plus the principal of the loan plus the total interest. However, when the ratio of debt investment and equity investment exceeds 5 to 1, A.I.D. may require a lesser maximum amount. The current amount that an investor will normally want to select will be the sum of the dollar amount of the initial investment less any previous repatriations of the investment and further adjusted upward for earnings retained in the business or downward for losses plus the amount of the unpaid principal at the beginning of the Contract Period plus the amount of interest due during the Contract Period. Although, it will not be necessary to specify in the contract which portion of the maximum amount or the current amount is attributable to debt and which to equity, it will be necessary to delineate the exact nature of the investment for the purpose of the definition of investment. As a result of combining both the debt and equity investments into one maximum and one current amount representing the total investment, the investor will obtain a coverage of his equity investment in excess of 200% as his debt is repaid.

3. COMPENSATION FOR LOSS

The method of computing compensation under the guaranty depends both upon the nature of the investment and upon the type of expropriation involved.

If an equity owner's interest in a foreign enterprise is expropriated, compensation will be equal to the dollar amount of the original guaranteed investment adjusted to reflect the effect on such investment of the subsequent operations of the foreign enterprise, i.e., the investor's proportionate share of undistributed earnings and realized capital gains will be added to the amount of his original investment, while his proportionate share of any capital distribution, operating losses, and realized capital losses will be subtracted from the amount of his original investment. The undistributed earnings, losses, and capital gains and losses of the enterprise will be translated into dollars at the same rate of exchange as would be used for converting local currency into dollars under the convertibility guaranty. The compensation paid to the investor, however, may not exceed the current amount of guaranty in force on the date of expropriation.

If a loan investment is expropriated, compensation will equal the outstanding principal balance plus the amount of unpaid interest thereon that has accrued as of the date of the expropriation. However, if the foreign enterprise is insolvent and the assets of the expropriated foreign enterprise as of the date of expropriation are less than the total liabilities of the enterprise, compensation under the guaranty will be limited to what the investor would have received had the enterprise been liquidated and its assets distributed as though in bankruptcy. Otherwise, an expropriated investor would receive more under his insurance than he would have been otherwise able to obtain. Compensa-

tion, in any event, may not exceed the current amount of guaranty in force on the date of the expropriation.

When the foreign government, through action other than a bona fide exchange control action, prevents the withdrawal from the foreign country of interest and principal payments received by an owner of debt securities, compensation under the expropriation guaranty is limited to the U.S. dollar value of such payments.

4. CLAIMS FOR LOSS

Prior to receipt of compensation under the guaranty against expropriation, the investor will usually be required to transfer to the United States Government all of his right, title and interest in the guaranteed investment. In general, when the investment is in equity shares of the foreign enterprise, the investor must assign all of these shares to the United States Government; when the investment is a loan, the entire instrument evidencing the investment must be assigned; and when the investment is in a branch operation, all of the assets of the branch relating to the investment and claims relating to the assets must be assigned.

When the government action constituting the expropriation consists only in the prevention of the withdrawal from the foreign country of money received by the investor from the foreign enterprise as dividends, interest or returns of capital, the investor must assign to the United States Government his right, title and interest in those funds.

Following the date of expropriation and until the investor's remaining interest in the foreign enterprise is transferred to the United States Government, the investor must take all reasonable, available measures to preserve and pursue its claims against the expropriating foreign government.

Upon the assumption of its interest by the United States, the investor still has the obligation to cooperate with the United States Government in prosecuting those claims; for example, by remaining the party litigant, producing witnesses and documents, and otherwise assisting in the litigation or the diplomatic presentation of claims. The investor must also cooperate with respect to the administration of any property that is assigned to the United States Government. Expenses incurred in this cooperation will be reimbursed by the United States Government.

5. COST OF EXPROPRIATION GUARANTY

The fee for expropriation guaranty, payable annually in advance, is one-half of one percent ($\frac{1}{2}\%$) per year of the current amount of the guaranty. A standby fee of one-tenth of one percent ($\frac{1}{10}\%$) is charged for the difference between the maximum amount and the current amount for each annual contract period.

6. COMBINED COVERAGE OF EXPROPRIATION AND WAR RISKS

A. Investors desiring both expropriation and war, revolution and insurrection coverages, in those countries where both coverages are currently available, may achieve a fee saving by carrying combined

Expropriation and War Risk coverage at the annual rate of $\frac{7}{8}\%$ for the current amount at risk (instead of carrying the expropriation and war risk coverages separately). An additional saving is available to investors who require standby coverage, as is frequently the case in equity investments, since only one standby amount which will cost $\frac{1}{10}\%$ is required. The use of the combined coverage will afford the same amount of insurance protection as the separate coverages in most cases since claims for expropriation and war are virtually mutually exclusive. However, it should be noted that there are certain cases resulting from an unusual combination of compensated claims over the life of the contract where less coverage might be obtained under combined rather than separate coverages. Questions on this point should be addressed to the Specific Risk Guaranty Division.

Generally, the combined coverage will be more economical than separate coverages in cases where the amount of war risk coverage sought is within 25% of the amount of expropriation coverage desired. When the variance between the two coverages is more than 25%, individual coverages at $\frac{1}{2}\%$ each per annum cost less than the combined coverage. In cases with a significant amount of standby insurance, however, investors may even find combined coverage less expensive than individual coverages when the variance between expropriation and war coverage is more than 25%.

The decision to take the same or differing amounts of expropriation insurance and war risk insurance is influenced primarily by the nature of the enterprise in which the investment is made. Since war, revolution and insurrection insurance covers only the investor's interest in the tangible property of the enterprise and expropriation insurance is broader, covering the investor's interest in all property of the enterprise, it follows that the greater the proportion of the assets of the enterprise that are in tangible property, the greater the tendency to have similar amounts of expropriation and war risk coverage. Thus, it can generally be assumed the combined coverage will be used, where the risks of expropriation and of war, revolution and insurrection are judged to be approximately equal, for investments in foreign enterprises which have assets that are roughly 75% in the form of tangible property.

The maximum amount of guaranty coverage that normally may be obtained in connection with combined coverage is set forth in Section 2 of this chapter.

B. The following examples of combined and separate coverages should serve to illustrate the above principal:

Example 1: An investor makes an equity investment of \$10,000,000 consisting of all of the stock of a foreign enterprise engaged in manufacturing, which for the sake of the example, has no debt. Ninety percent of the assets of the project will be in the form of tangible property (this percentage will vary from industry and to a certain extent will vary among companies in the same industry).

The fee for the first year, using *separate coverages* will be:

Expropriation			War, Revolution and Insurrection		
Maximum	\$20,000,000			\$18,000,000	
Current	10,000,000 @ 1/2%	\$50,000	9,000,000 @ 1/2%	\$45,000	
Standby	10,000,000 @ 1/10%	10,000	9,000,000 @ 1/10%	9,000	
		<u>\$60,000</u>		<u>\$54,000</u>	

Total: \$114,000

The fee for the first year, using *combined coverage*, will be:

Combined Expropriation & War		
Maximum	\$20,000,000	
Current	\$10,000,000 @ 7/8%	\$87,500
Standby	10,000,000 @ 1/10%	10,000
	Total:	<u>\$97,500</u>

Here the use of combined coverage will result in a saving of \$16,500.

Example 2: An investor makes an equity investment of \$1,000,000 in a foreign enterprise engaged in the assembly of equipment. Here also the assumption is present that the equity represents all of the stock and no debt is outstanding. Sixty percent of the assets of the project will be in the form of tangible property.

The fee for the first year, using *separate coverages*, will be:

Expropriation			War, Revolution & Insurrection		
Maximum	\$2,000,000			\$1,200,000	
Current	1,000,000 @ 1/2%	\$5,000	600,000 @ 1/2%	\$3,000	
Standby	1,000,000 @ 1/10%	1,000	600,000 @ 1/10%	600	
		<u>\$6,000</u>		<u>\$3,600</u>	

Total: \$9,600

The fee for the first year, using *combined coverage*, will be:

Combined Expropriation & War		
Maximum	\$2,000,000	
Current	1,000,000 @ 7/8%	\$8,750
Standby	1,000,000 @ 1/10%	1,000
	Total:	<u>\$9,750</u>

Here it would cost \$150 less to use separate coverages rather than the combined coverage.

There are many other factors that may enter into any individual decision concerning the amount of coverage desired. These may be discussed as they arise with the Specific Risk Guaranty Division.

Chapter V

WAR, REVOLUTION AND INSURRECTION GUARANTY

1. NATURE OF PROTECTION

Under this guaranty, compensation is paid for loss of an investor's interest in the tangible property of the foreign enterprise directly caused by war, revolution or insurrection. There is no requirement that there be a formal declaration of war. Hostile acts of any national or international organized force are covered, as are hostile acts of organized revolutionary or insurrectionary forces, including acts of sabotage. The guaranty also includes protection against injury to tangible property that is a direct result of actions taken in hindering, combating or defending against a hostile act, whether in a war, revolution or insurrection.

The guaranty does not cover injury to the physical property of the enterprise that is directly caused by civil strife of a lesser degree than revolution or insurrection. The guaranty also does not protect either intangible property such as accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, or manuscripts or a security interest in tangible property held as security for a debt (mortgage, trust deed, etc.). Finally, compensation will not be due under the guaranty if the investor or the foreign enterprise negligently failed to take reasonable measures to prevent the damage to the property.

2. MAXIMUM AMOUNT AND CURRENT AMOUNT OF PROTECTION

The largest maximum amount of guaranty that may be selected by an investor holding equity shares will be the greatest interest that the investor could have in the tangible assets of the enterprise at their depreciated value. This amount could, in some instances, be greater than the value of the investor's interest at the time the investment was made: such as when earnings are reinvested in tangible property at a rate exceeding the rate of depreciation of the enterprise's assets; or when short-term liabilities are large and used to purchase tangible property. Normally, the maximum amount of guaranty will not be allowed to exceed 200% of the equity investment. The maximum amount for a loan investment may never exceed the sum of the principal and the interest due under the loan.

The current amount of guaranty is normally no larger than the amount of the investor's interest, (estimated by means of the fraction indicated below), in the depreciated tangible property held by the enterprise in the contract year.

If the investor has both an equity investment and a loan invest-

ment in the foreign enterprise, he will select one maximum amount and one current amount to cover his entire investment. Ordinarily his maximum will be the sum of the greatest interest that the investor could have in the tangible assets of the enterprise at their depreciated value, not exceeding 200% of an equity investment, plus principal and interest due under a loan. The normal current amount of the guaranty will be the sum of the investor's interest (estimated by means of the first fraction indicated below) in the depreciated tangible property held by the enterprise in the contract year plus the investor's share of the debt as determined by the second fraction indicated below.

3. COMPENSATION FOR LOSS

The amount of compensation payable under this guaranty is the investor's interest, arising out of his guaranteed investment, in the damage to the tangible property of the foreign enterprise. The amount of damage for the purpose of computing compensation is the smaller of (1) the cost of the damaged tangible property or its original fair market value in the United States plus freight, insurance, etc., and less normal depreciation, and less any abnormal deterioration of the property, and (2) the reasonable cost of repairing or replacing the damaged property.

The investor's interest in the amount of damage at any given time is determined by multiplying the amount of damage to the tangible assets by a fraction, the numerator of which is the investor's present or net investment in the enterprise, and the denominator of which is the sum of the capital and surplus and long-term liabilities of the enterprise. Thus, if the investor holds equity in the enterprise, the fraction is:

$$\frac{\text{initial investment in equity minus return of investment and adjusted for pro rata retained earnings, losses and realized capital gains and losses}}{\text{capital+surplus+long-term liabilities (including current portion)}}$$

If the investor holds debt securities in the foreign enterprise, the fraction is:

$$\frac{\text{unpaid principal+accrued unpaid interest}}{\text{capital+surplus+long-term liabilities (including current portion)}}$$

Under certain circumstances, it may be possible to eliminate from the denominator of the formula long-term liabilities which the Foreign Enterprise owes to the United States Government.

The amount of compensation is computed by multiplying the amount of damage to the tangible property by the above fraction. Compensation will be reduced by any amounts received by the investor from other sources as compensation for the damage to the property, or by the investor's share of such sums received by the foreign enterprise. This includes the net proceeds from the sale of the damaged property. Moreover, the amount of compensation payable to the investor shall be the least of the following: (a) the statutory limitation of the original investment plus earnings and profits actually accrued

thereon; (b) the current amount of guaranty in force on the date the damage was incurred; and (c) the investor's share of the damage as calculated in accordance with the above formula.

4. CLAIMS FOR LOSS

Claims under the guaranty must exceed either \$10,000 or 1% of the current amount of guaranty for that contract year, whichever is smaller. The low premium rate, the amount at risk, administrative needs and policy objectives require the establishment of such a minimum. However, when an otherwise eligible loss exceeds the limit, the entire amount of the claim will be paid.

As soon after the filing of a claim as conditions permit, authorized agents of A.I.D. will make any necessary inspections of the property to determine the amount of damage. If, because of conditions in the foreign country, A.I.D. cannot make these inspections, the amount of damage will be presumed to be sixty percent (60%) of the covered value (e.g., cost less depreciation) of the tangible property, unless the investor furnishes evidence of a different amount. This 60% presumption is subject to subsequent review, and adjustments or refunds in the compensation paid.

Prior to the receipt of compensation under the guaranty, the investor must assigned to the United States Government any claims, causes of action, or rights for compensation which the investor might have from any source because of the damage to the property. The investor is also under an obligation to take all reasonable measures to prevent any further damage to the property and to cooperate with A.I.D. in assessing the damage.

A loan investor must credit compensation received under the guaranty against the outstanding interest and principal of the loan. The guaranty contract does not require an equity investor to assign his securities or take other action with respect to the foreign enterprise's equity because of compensation for a war loss under the guaranty.

5. COST OF WAR RISK GUARANTY

The annual fee for the war revolution, and insurrection guaranty is one-half of one per cent ($\frac{1}{2}\%$) of the current amount of guaranty, plus a standby fee of one-tenth of one percent ($\frac{1}{10}\%$) on the difference between the current amount and the maximum amount of guaranty.

6. COMBINED EXPROPRIATION AND WAR RISK COVERAGE

If an investor desires both expropriation and war, revolution and insurrection coverage, a combined expropriation, war, revolution and insurrection may be obtained. This combined coverage is discussed more fully in Chapter IV, Section 6, above.

Chapter VI

HOW TO PROCEED

1. REQUEST FOR ASSURANCE AGAINST PREJUDICE LETTER

Pursuant to the statutory criteria and to the objectives of the Specific Risk Investment Guaranty Program, guaranties are normally issued only for new investments. An applicant must make application to A.I.D. prior to taking final action in the investment process. Applications received after an investment has already been made or irrevocably committed will be rejected on the ground that the investment is not new, even though the investment is in all other respects eligible for guaranties. "Irrevocably committed" ordinarily means that the investor is legally committed to the investment or has commenced to make the investment. An agreement to invest subject to the obtaining of investment guaranties will not prevent an investor from securing such guaranties.

It is the practice of A.I.D. to indicate that an application has been received by issuance of an assurance against prejudice letter, sometimes called a waiver letter. This allows an investor to make an investment, or become irrevocably committed to make it, without impairing the eligibility of the investment for a guaranty contract.

Requests for an assurance against prejudice letter, which must be in writing, must contain the following information:

- a. The identity of the investor;
- b. A statement that the investor is a United States citizen, or a corporation, partnership or other association organized and existing under the laws of the United States or of any state or territory thereof and substantially beneficially owned by United States citizens, or a foreign business wholly owned by eligible investors;
- c. The country or territory in which the investment is to be made;
- d. A brief description of the project in which the investment will be made;
- e. A statement that the investment has not been made or irrevocably committed; and
- f. The type of investment, (e.g., equity), the guaranty coverages, and an estimate of the amounts under each coverage, desired for the investment. (The investor may, at a later time, change both the coverages and the amounts requested under each.)

Alternatively, the investor may complete and submit in triplicate the simple, one-page application entitled "Request for Assurance Against Prejudice Letter for Specific Risk Investment Guaranties," Form AID 1520-1 (9-65). Application forms will be mailed by the Investment Guaranties Division upon request. Appendix A of this Handbook

contains a completed "Request for Assurance against Prejudice Letter."

Upon receipt of the necessary information, the Investment Guaranties Division will promptly issue an assurance against prejudice letter. The initial letter is valid for one year and, unless cancelled by reason of a denial of the investor's application for guaranties, may normally be extended upon a showing of need for successive one-year periods, or for such shorter periods as may be appropriate.

The assurance against prejudice letter is effective only for the purpose of allowing the investor to go forward with the investment without thereby losing its status as a new investment; however, it does not constitute an assurance that the investment has satisfied other eligibility requirements. If some impediment to eligibility should appear at the outset, the Investment Guaranties Division will attempt to call this to the investor's attention. *It should be clearly understood that issuance of the assurance against prejudice letter in no way constitutes a commitment to issue the requested guaranties.*

2. OBTAINING FOREIGN GOVERNMENT APPROVAL

Before a guaranty contract may be issued, the investor must secure the approval of the project in which the investment is being made from the government of the foreign nation. The requirement of a project approval is contained in the investment guaranty agreement between the United States and the foreign nation.

It is the investor's responsibility: to study the pertinent laws and regulations of the different foreign countries governing approvals of foreign investments, to present to the foreign government the details of the investment, to satisfy that government's requirements for approval, and to request that government to send its approval of the project for guaranty purposes to the A.I.D. Mission (or the U.S. Embassy), which will forward it to the Investment Guaranties Division. The original signed copy of the foreign government approval must be delivered to AID; this delivery is the responsibility of the investor. When the investor is an entity organized under the laws of a foreign country, the investor should disclose to the foreign government that the investor is owned by United States citizens.

Sometimes the foreign government approval process is complicated. One agency of the foreign government may handle approvals for remittances of earnings and capital; another agency may handle approvals of investments; and still a different agency may issue approvals for investment guaranty purposes. The latest information available to A.I.D. as to the appropriate official or agency of the foreign government to whom the request for project approval for guaranty purposes should be directed will be contained in the assurance against prejudice letter. The Investment Guaranties Division will also, on request, give investors the latest information available on procedures. In addition, the A.I.D. Mission or the U.S. Embassy can direct investors to the appropriate foreign government officials and assist investors in obtaining the requisite approvals should difficulties be encountered.

Applicants for guaranties against inconvertibility of currency must also ascertain the foreign government's willingness to permit

the remittance of earnings and repatriation of capital. In most cases, the general exchange regulations of the country under which the applicant would qualify will be sufficient; in other cases when U.S. dollars are not normally available for the remittance of earnings or repatriation of capital, a special approval by the foreign government may be necessary. This form of foreign government approval is required because of the policy that the convertibility guaranty will not protect the investor from the effect of any exchange regulation or practice in existence at the time of the execution of the guaranty contract. This information should be communicated to the Investment Guaranties Division.

No formal order of procedure has been established for obtaining the required government approvals. However, it is usually preferable to establish and, when necessary, to obtain the right to remit dividends and repatriate capital before seeking the approval by the foreign government of the project for investment guaranty purposes.

Normally, cases will not be processed towards a guaranty contract until the original of the foreign government approval has been received by the Investment Guaranties Division. In some unusual situations requiring urgent action, the Investment Guaranties Division will discuss contract provisions and other matters with the investor while the approvals are being obtained. Promptness in applying for and obtaining the foreign government approval will permit quicker action upon the application for guaranties. The processing of applications can also be expedited if applicants will forward to the Investment Guaranties Division copies of all approvals pertaining to the investment project received from foreign governments—even though not expressly connected with investment guaranties.

3. APPLICATION FOR SPECIFIC RISK INVESTMENT GUARANTIES

As soon as the final form of the investment is reasonably clear, but before the expiration of the assurance against prejudice letter, the investor must complete and submit to the Investment Guaranties Division three copies of the Application for Specific Risk Investment Guaranties, Form AID 1520-2(1-65).

The final determination of the eligibility of the investment for guaranties is made in large part on the basis of the information contained in this application. Because investment proposals vary widely in nature and because the application may not provide sufficiently detailed information, it may become necessary to require additional information from the investor to ascertain whether the investment meets the statutory criteria and objectives governing eligibility for guaranties. Moreover, until the guaranty contract is issued, the investor is under a continuing obligation to keep the application current by amendment. Misrepresentations or failures to disclose relevant information may result in the cancellation of the guaranties.

No guaranty contract will be issued unless a completed Application for Specific Risk Investment Guaranties is on file (including all other pertinent information and documents) with the Investment Guaranties Division.

Appendix B to this Handbook contains a sample completed Application for Specific Risk Investment Guaranties.

4. PROCESSING THE APPLICATION—PREPARATION OF CONTRACTS

Following receipt of the required approval from the foreign government, the investor's file is assigned to a Guaranty Officer. He will review the foreign government approval, the completed Application for Specific Risk Investment Guaranties, and the documents called for by that application, and determine whether any clarification of the details of the proposed investment is needed either for the purpose of determining the investment's eligibility for guaranty coverage or for preparing the guaranty contract.

At the earliest time possible, the investor will be sent a draft guaranty contract for review. This consists of the printed General Terms and Conditions and the Special Terms and Conditions which together constitute the Contract of Guaranty. This contract of guaranty between A.I.D. and the investor embodies the United States Government's guaranty of the investment against the risk or risks indicated.

The General Terms and Conditions, specimen copies of which are available upon request from the Investment Guaranties Division, contain the provisions defining the rights and obligations of the investor and of the United States Government under the Contract of Guaranty. These provisions are standard for all investors and will be altered only to meet unusual circumstances. However, special standard adaptations have been made for investments in a branch of the investor, for licensing and technical assistance agreements, and for several other special categories of investments.

The Special Terms and Conditions contains a description of the investor, the investment, the project in which the investment is being made, and the securities evidencing the investment. In many instances, drafts of these items will have been inserted in copies of the Special Terms and Conditions sent to the investor. This information, as well as the types and amounts of guaranty coverages selected, will have been based upon information contained in the investor's application and upon other representations made by the investor to the staff of the Investment Guaranties Division. When the investor signs the Contract of Guaranty, these statements become his representations. Therefore, investors must carefully review the statements and make whatever alterations as appear necessary before the contract is signed. Where the spaces for these statements in the copies of the Special Terms and Conditions received by the investor are blank, he will have to fill them in before signing and returning the Contract of Guaranty to the Investment Guaranties Division.

When the investor approves the terms of the Contract of Guaranty, he must have it executed by someone authorized to do so and returned to the Investment Guaranties Division, along with a check for the correct fee for the first contract period. The contract is then reviewed further for eligibility and submitted to the Assistant Administrator for Development Finance and Private Enterprise for final ap-

proval. If approved, he then executes the guaranty contract on behalf of the United States Government. A copy of the executed contract is returned to the investor.

All information submitted by the investor will be held in confidence by the U.S. Government prior to the execution of the contract of guaranty. However, when a guaranty contract is issued, it is the policy of A.I.D. to release a public announcement describing in general terms the project in which the investment is being made and the nature and amount of the guaranty contract, unless the investor informs A.I.D. in advance that he objects to such a release.

Only after the guaranty contract has been executed by A.I.D. does the United States assume liability under the guaranty; until then, risk of loss is borne by the investor.

5. ADMINISTRATION OF THE GUARANTY CONTRACT

The guaranty contract specifies certain duties of the investor which extend throughout, and in some instances beyond, the life of the contract. The recurring duties, however, are generally limited to the annual election of the current amount and the maximum amount for each coverage, the annual payment of fees, and the submission of annual certifications by independent certified public accountants relating to the books and records kept in connection with the investment.

The election of both the current amount and the maximum amount for each coverage and the payment of the annual fee must each be completed before the commencement of the contract year to which such elections relate. If the investor fails to make such elections within the allotted time, the current amount and the maximum amount for each coverage for that year shall be the same as the respective amounts for the preceding year, and the fee that is due for that year is calculated on that basis. If the investor fails to pay the fee in advance, a penalty is assessed of one-half of one percent ($\frac{1}{2}\%$) per month of the unpaid fee. Moreover, A.I.D. may cancel the guaranty contract, or refuse to pay compensation or any claim, unless the investor pays the fee plus the accrued penalty within thirty days following receipt from A.I.D. of written notice of default.

The nature of the financial statements called for by the guaranty contract depends upon the type of investment and the extent to which the investor controls the foreign enterprise in which the investment is made. In all cases, however, the investor must submit to A.I.D. a certification prepared by an independent certified public accountant or by some other accountant acceptable to A.I.D. that its books and records relating to the investment, as well as the reports submitted to A.I.D., are prepared in accordance with accounting principles generally acceptable in the United States. To the extent of its ability, the investor must also cause the foreign enterprise to submit a similar certification with respect to its financial reports submitted to A.I.D.

In addition to these recurring duties, the investor promises in the guaranty contract that it will continue to meet the eligibility requirements of the legislation authorizing the guaranty program, that it will

not voluntarily assign the guaranty contract to any other party without the prior consent of A.I.D. (certain involuntary assignments are permitted by section 2.05 of the General Terms and Conditions), and that it will promptly disclose to A.I.D. all agreements and arrangements made with foreign government of the country where the investment was made regarding the transfer of local currency into U.S. dollars and compensation for losses attributable either to expropriatory actions or to war, revolution, or insurrection.

Claims under the guaranties must be prepared and submitted to A.I.D. as specified in detail in the guaranty contract. Throughout the period during which a claim for compensation is pending and following the payment of compensation, the investor is under a duty to cooperate with A.I.D. in supplying requested information relating to the claim for payment, in pursuing the available administrative and judicial remedies in the foreign country relating to the loss, and in preserving and managing whatever property is assigned by the investor to the United States Government as a condition to receiving payment of compensation. These continuing duties are fully described in the guaranty contract.

Disputes arising under the guaranty contract are submitted to binding arbitration conducted under the rules of the American Arbitration Association.

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENTAPPENDIX A
FORM APPROVED
BUDGET BUREAU NO.
24-R-031.5REQUEST FOR ASSURANCE AGAINST PREJUDICE LETTER (Waiver Letter)
FOR SPECIFIC RISK INVESTMENT GUARANTIES

Specific Risk Investment Guaranties will not be issued for any investment which has already been made or irrevocably committed. An investor desiring to proceed with his investment without prejudice to his application for guaranties should first obtain an Assurance Against Prejudice Letter. Any investment made or irrevocably committed after the date of the Assurance Against Prejudice Letter will not be ineligible because it was committed prior to the submission of the application for guaranties. The Assurance Against Prejudice Letter serves only this purpose and does not constitute any assurance that the investment is otherwise eligible for an investment guaranty.

WARNING: Many investments may be ineligible for investment guaranty coverage even though the investor receives an Assurance Against Prejudice Letter (Waiver Letter), because they cannot qualify under existing statutory and administrative policy. If an investor wishes to be certain that he will receive guaranties upon his investment, he should submit the more detailed Application for Specific Risk Investment Guaranties for a determination of eligibility.

1. APPLICANT

NAME	ADDRESS (Number, Street, City, State, ZIP Code)	TELEPHONE NUMBER
Investor Company	100 Main Street, Chicago, Illinois 000000	000-000-1000

2. TYPE OF APPLICANT

- INDIVIDUAL(S) WHO IS (ARE) UNITED STATES CITIZEN(S)
- CORPORATION, PARTNERSHIP OR OTHER ASSOCIATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OR A STATE OR TERRITORY THEREOF, AND SUBSTANTIALLY BENEFICIALLY OWNED BY UNITED STATES CITIZENS
- WHOLLY OWNED* FOREIGN SUBSIDIARY OF A UNITED STATES CORPORATION

3. AUTHORIZED REPRESENTATIVES OF APPLICANT FOR PURPOSE OF GUARANTY APPLICATION

NAME	ADDRESS (Number, Street, City, State, ZIP Code)	TELEPHONE NUMBER
John Doe, Counsel	1700 J Street, N. W., Washington, D. C. 20006	FE 8-6000
Richard H. Row, President	100 Main Street, Chicago, Illinois 000000	000-000-1000

4. COUNTRY WHERE INVESTMENT CONTEMPLATED: "X" Country

5. a. ESTIMATED TOTAL AMOUNT OF INVESTMENT:	b. CONSISTING OF:
\$ 7,000,000	Cash: \$ 6,000,000 Machinery or Equipment: \$ 1,000,000
	Other (Specify) - : \$

6. DESCRIBE IN GENERAL TERMS THE INVESTMENT PROJECT AND PRODUCT INVOLVED

Proposed investment will be made for the purpose of constructing and operating a synthetic resins plant in "X" country.

7. FOREIGN ENTERPRISE IN WHICH INVESTMENT IS BEING MADE

NAME Far East Company	ADDRESS 306 Luzon Avenue, "X" Country
PLACE OF INCORPORATION "X" Country	DESCRIPTION OF BUSINESS Manufacture of synthetic resins

8. MAXIMUM AMOUNTS OF COVERAGE REQUESTED

TYPE OF INVESTMENT	CONVERTIBILITY	EXPROPRIATION	WAR, REVOLUTION AND INSURRECTION
EQUITY SECURITIES	\$8,000,000	\$8,000,000	\$8,000,000
DEBT SECURITIES	\$6,000,000	\$6,000,000	\$6,000,000
OTHER			

9. SIGNATURE

I hereby affirm that no portion of this investment has been made or irrevocably committed.

Applicant: _____ By: _____

Date: _____ Title: _____

SEND THREE (3) COPIES TO:

INVESTMENT GUARANTIES DIVISION
OFFICE OF DEVELOPMENT FINANCE AND PRIVATE ENTERPRISE
AGENCY FOR INTERNATIONAL DEVELOPMENT
DEPARTMENT OF STATE
WASHINGTON, D. C. 20523

* A subsidiary organized under the laws of a foreign country will be considered "wholly owned" by a United States corporation if less than five percent of its total issued and subscribed share capital is held by

persons other than the U.S. parent corporation pursuant to the requirements of the laws where the subsidiary is incorporated or operating.

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENTFORM APPROVED
BUDGET BUREAU NO.
24-R-033.6

APPLICATION FOR SPECIFIC RISK INVESTMENT GUARANTIES

APPENDIX B

This application is to be used in applying for investment guaranties against inconvertibility of currency, expropriation or confiscation, and war, revolution or insurrection, as authorized by Section 221 et seq. of the Foreign Assistance Act of 1961, as amended.

If the investor has already received an Assurance Against Prejudice Letter, this application should be completed and filed as soon as the final form of the investment is reasonably clear, but before the expiration of the Assurance Against Prejudice Letter.

Specific risk investment guaranties are issued only for new investments in the foreign country. An investor must therefore receive an Assurance Against Prejudice Letter (Waiver Letter) before the investment is made or is irrevocably committed. An Assurance Against Prejudice Letter assures the investor that consideration of his full Application for Specific Risk Investment Guaranties will not be prejudiced because he has proceeded to make or irrevocably commit his investment. In this way, the investor may proceed with his investment plans until the final form of the investment is sufficiently clear to enable this Application for Specific Risk Investment Guaranties to be completed. The Assurance Against Prejudice Letter may be applied for by completing the one-page application entitled "Request for Assurance Against Prejudice Letter" which may be obtained from the Investment Guaranties Division, Agency for International Development, Washington, D. C. 20523.

Three (3) copies of this application must be completed and filed by the investor. If the investor is acting as an agent, trustee, or otherwise in a representative capacity for another, the relationship should be fully explained in an attachment to this application.

This application should be kept current by amendment. A.I.D. relies on the information contained in the application in determining eligibility for guaranties and in issuing the guaranty contract. Misrepresentations or failures to disclose relevant information may result in the cancellation of the investment guaranties.

Where additional information is contained in attachments, place on each attachment the item number in the application to which it refers.

1. DATE OF APPLICATION March 15, 1965		2. COUNTRY WHERE INVESTMENT IS CONTEMPLATED "X" Country	
3. INVESTOR			AREA CODE AND TELEPHONE NO.
NAME	ADDRESS OF PRINCIPAL PLACE OF BUSINESS (Include ZIP Code)		
Investor Company	100 Main Street		
	Chicago, Illinois		000-000-1000
4. AUTHORIZED REPRESENTATIVES OF THE INVESTOR FOR PURPOSES OF THIS APPLICATION			
NAME	ADDRESS (Number, Street, City, State, ZIP Code)		AREA CODE AND TELEPHONE NO.
Richard H. Rowe, President	Same as Applicant		
John Doe, Counsel	1700 J Street N.W., Washington D.C.		000-0000

5. ELIGIBILITY OF THE INVESTOR

(A) IDENTITY OF THE INVESTOR

INDIVIDUAL Is individual a United States citizen? YES NO

 UNITED STATES CORPORATION*

(1) Incorporated under the laws of Delaware

(2) Is investment in a foreign branch of such corporation? YES NO

 UNITED STATES* PARTNERSHIP OR OTHER ASSOCIATION

Type of association: _____ Existing under the laws of _____

 WHOLLY OWNED** FOREIGN SUBSIDIARY OF A UNITED STATES CORPORATION

(B) IF THE INVESTOR IS OTHER THAN AN INDIVIDUAL, COMPLETE THIS PART.

(1) Is the investor indebted to foreign creditors in excess of 200% of investor's net worth? YES NO

(2) IF THE INVESTOR IS A UNITED STATES CORPORATION,* give below the approximate percentage of each class of its shares beneficially owned by United States citizens as individuals.

IF THE INVESTOR IS A WHOLLY OWNED** FOREIGN SUBSIDIARY OF A UNITED STATES CORPORATION, give below the approximate percentage of the shares of its United States parent corporation which are beneficially owned by United States citizens as individuals.

For the purpose of this question, shareholders with addresses in the United States may be presumed to be United States citizens unless the investor knows or has reason to know the contrary.

TYPE OF SHARES		CHECK IF VOTING SHARES
a. Common Stock	<u>95</u> %	<input checked="" type="checkbox"/>
b. Preferred Stock	<u>100</u> %	<input type="checkbox"/>
c. Other: _____	_____ %	<input type="checkbox"/>
_____	_____ %	<input type="checkbox"/>
_____	_____ %	<input type="checkbox"/>

* I.e., organized and existing under the laws of the United States or of any state or territory thereof.

** A subsidiary organized under the laws of a foreign country will be considered "wholly owned" by a United States corporation if less than 5 percent of the total issued and subscribed share capital is held by persons other than the parent corporation pursuant to the requirements of the laws where the subsidiary is incorporated or operating.

- (3) IF THE INVESTOR IS A UNITED STATES PARTNERSHIP OR ASSOCIATION, is more than 50% of the interest in such organization beneficially owned by United States citizens as individuals? YES NO
- (4) If the investor is a corporate entity that does not fit into the categories under (2) of this Part, or if the answer to (3) is "No", attach a statement tracing the beneficial ownership of the investor that is sufficient to show that over 50% of the beneficial ownership of the investor is in United States citizens as natural persons.

(C) IF THE INVESTOR IS A WHOLLY OWNED FOREIGN SUBSIDIARY OF A UNITED STATES CORPORATION, COMPLETE THIS PART

- (1) Foreign subsidiary incorporated under the laws of _____
- (2) United States Parent Corporation:
- | NAME | ADDRESS OF PRINCIPAL PLACE OF BUSINESS | PLACE OF INCORPORATION |
|------|--|------------------------|
| | | |
- (3) Percent of foreign subsidiary's total issued and subscribed share capital held by persons other than the parent corporation: _____% NONE
- (4) Give citation to the law requiring that such shares be held by persons other than the parent corporation:

6. RECIPIENT OF THE INVESTMENT

- (A) FOREIGN ENTERPRISE RECEIVING INVESTMENT
- | NAME | ADDRESS OF PRINCIPAL PLACE OF BUSINESS | TYPE OF ENTITY (CORPORATION, BRANCH OF U.S. CORPORATION, ETC.) |
|------------------|--|--|
| Far East Company | 306 Luzon Avenue, X Country | Corporation |

(B) GIVE BRIEF DESCRIPTION OF THE BUSINESS OF THE FOREIGN ENTERPRISE

Manufacture and sale of synthetic resins and products for both "X" country and Asian markets.

- (C) APPROXIMATE PERCENTAGE OF EQUITY INTEREST INVESTOR WILL HOLD IN THE FOREIGN ENTERPRISE FOLLOWING THE INVESTMENT 96 % NONE

- (D) DOES OR WILL A FOREIGN GOVERNMENT OR ANY AGENCY THEREOF OWN ANY INTEREST IN THE FOREIGN ENTERPRISE? YES NO If YES, what percent? _____% Give name and address of such foreign government agency and indicate its functions:

7. PROJECT

- (A) DESCRIBE IN GENERAL TERMS THE PROJECT ACTIVITY RESULTING FROM THE INVESTMENT AND THE PRODUCT INVOLVED (E.G., MODERNIZATION OF MACHINE SHOP TO DOUBLE PRODUCTION OF AUTOMOBILES).

Proposed investment will be made for the purpose of constructing and operating a synthetic resins plant in "X" country.

- (B) DESCRIBE BRIEFLY THE MANNER IN WHICH THE INVESTMENT WILL FURTHER THE DEVELOPMENT OF THE ECONOMIC RESOURCES AND PRODUCTIVE CAPACITIES OF THE COUNTRY OR AREA WHERE THE PROJECT IS LOCATED. SUMMARIZE THE EFFECTS THE INVESTMENT WILL HAVE ON THE COUNTRY OR AREA INVOLVED, INCLUDING REFERENCE TO SUCH FACTORS AS FOREIGN EXCHANGE EARNINGS, IMPORT SAVINGS, DEVELOPMENT OF SKILLED LABORERS, ETC.

The economy of the country might reasonably be expected to benefit from the operation of this plant due to the purchase of 100 mm pounds of ethylene per year from local firms, creation of approximately 300 jobs in the direct operation of this facility and thousands of jobs in fabricating industries using the product throughout the country. At prevailing prices, about \$3,000,000 per year in foreign exchange will be earned for the country from the exports. Construction of the plant will begin on September 1, 1965, and completion is estimated on or about September 1, 1966.

8. NATURE OF THE INVESTMENT CONTRIBUTION

- (A) CASH AMOUNT \$ 6,000,000 AMOUNT \$ 6,000,000
 IN UNITED STATES DOLLARS
 IN FOREIGN CURRENCY. AMOUNT AND KIND OF CURRENCY: _____
 EQUIVALENT DOLLAR VALUE OF CURRENCY: \$ _____
 IS SUCH CURRENCY FREELY CONVERTIBLE INTO UNITED STATES DOLLARS? YES NO
 DESCRIBE THE WAYS IN WHICH THE FOREIGN ENTERPRISE WILL USE THE CASH (e.g., \$35,000 for machinery and \$50,000 for working capital).

- (B) MACHINERY, EQUIPMENT, MATERIALS, OR COMMODITIES. VALUE \$ 1,000,000
 (1) Describe the machinery, equipment, materials, or commodities:
 Compressors, pumps, conveyors, reactors, towers and high pressure vessels.
 Materials and chemical additives for use in the manufacturing process.
 (including insurance and freight charges)
 (2) Describe basis for valuation:
 Cost of machinery, equipment, materials and commodities at current prices,
 which will be purchased by the Investor.
 (3) Is investor extending credit to the foreign enterprise for the purchase of the machinery, equipment, materials, or commodities? YES NO If YES, complete this part.
 a. Amount of credit: \$ _____
 b. Rate of interest: _____ % per annum
 c. Other charges: \$ _____
 d. State maturity dates and amounts due on each date:

e. Attach copy of credit instrument.

- (C) PATENTS, PROCESSES, OR TECHNIQUES. ESTIMATED VALUE \$ *
 (1) Describe the patent, process, or technique.

*Will be transferred at no cost to the foreign enterprise.

(2) Describe basis for valuation:

- (D) SERVICES (Other than above) VALUE \$ _____
 (1) Describe nature of services:

(2) Describe basis for valuation:

- (E) CONSTRUCTION CONTRACT (Do not complete any other part of Section 8)
 (1) Describe nature of construction to be performed (e.g., prime contractor for project, sub-contractor for building access road, etc.):

(2) State expected duration of construction to be performed by Investor:

(3) Describe terms and duration of payments:

(4) Attach copy of the construction contract.

(F) OTHER

VALUE \$ _____

Describe, and include basis for valuation:

(G) TOTAL AMOUNT OF THE INVESTMENT: \$ 7,000,000

9. IF WAR, REVOLUTION, AND INSURRECTION GUARANTY IS SOUGHT, COMPLETE THIS PART.

Give the estimated value of all tangible assets held by the foreign enterprise in the project country, and include all tangible assets obtained or to be obtained by reason of the investment. The value should be the cost of such property to the foreign enterprise, including the cost of freight, insurance, import duties, costs of installation and related costs (such cost not to exceed the fair market value in the United States at the time of acquisition plus the cost of freight and above related costs), less depreciation.

\$ 6,000,000

10. WHAT THE INVESTOR WILL RECEIVE FOR THE INVESTMENT

(A) EQUITY SECURITIES

(1) Class and number of shares in each class

Common: 1,000,000 Preferred: 100,000 Other (Specify): _____

(2) Describe the type, and the amount or estimated value, of the consideration paid for each class of security:

Common stock = Cash - \$3,000,000 and; machinery, equipment, materials, and commodities - \$1,000,000

Preferred Stock = Cash - \$1,000,000

(3) Are any such shares acquired or to be acquired from existing shareholders? YES NO

If YES, for each class of stock, state how many shares are so acquired, and their cost:

(B) DEBT SECURITIES. If more than one loan, answer questions below for each.(1) Principal amount \$ 2,000,000(2) Rate of interest: 6 % per annum(3) Interest and principal payable in U. S. dollars? YES NO

(4) If NO, specify currency: _____

(5) State maturity dates and amounts due on each date:

Principal payable in ten years from date of completion of plant; interest payable semiannually.

(6) Is there a guaranty of the repayment obligations of the borrower? YES NO

If YES, state the name and address of each guarantor:

(7) Attach copy of the loan instrument or other evidence of debt, and the guaranty agreement, if any.

(C) LICENSE OF PATENT, PROCESS OR TECHNIQUE, OR TECHNICAL ASSISTANCE AGREEMENT. If more than one license or agreement, answer questions below for each.

(1) Describe briefly terms and conditions (rates, etc.):

No coverage sought under the technical assistance agreement.

(2) Duration of license or agreement: _____

(3) Estimated total payments over life of license or agreement: \$ _____

(4) Will royalties or fees be payable in U. S. dollars? YES NO

(5) If NO, specify currency: _____

(6) Attach copy of the license or agreement.

(D) OTHER. Indicate nature of instrument and describe briefly its terms and conditions:

11. DATE OF INVESTMENT(A) APPROXIMATE DATE INITIAL INVESTMENT MADE OR WILL BE MADE: September 15, 1965(B) DATE IRREVOCABLE COMMITMENT TO INVEST MADE: June 1, 1965**12. PHASED INVESTMENTS**

If the investment is to be made in stages, briefly describe the proposed stages, giving dates and amounts:

September 1965	\$1,500,000	Balance of \$1,000,000 of investment will be made on or about September 1966
December 1965	1,500,000	
January 1966	500,000	
February 1966	500,000	

Loan will be made on or about September 1966

13. CURRENT AMOUNTS OF COVERAGE REQUESTED FOR FIRST CONTRACT PERIOD

(For instructions and sample, see Investment Guaranty Handbook)

FORM	CONVERTIBILITY	EXPROPRIATION	WAR, REVOLUTION AND INSURRECTION
Equity Securities	-0-	\$5,000,000	\$5,000,000
Debt Securities	-0-	\$2,120,000	\$2,120,000
Guaranty of a Loan			
Royalty or Fee			
OTHER (Indicate):			

14. MAXIMUM AMOUNTS OF COVERAGE REQUESTED

(For instructions and sample, see Investment Guaranty Handbook)

FORM	CONVERTIBILITY	EXPROPRIATION	WAR, REVOLUTION AND INSURRECTION
Equity Securities	\$10,000,000	\$10,000,000	\$10,000,000
Debt Securities	\$ 3,200,000	\$ 3,200,000	\$ 2,120,000
Guaranty of a Loan			
Royalty or Fee			
OTHER (Indicate):			

Number of years for which guaranties are desired: _____

15. REMISSION OF EARNINGS AND REPATRIATION OF INVESTMENT

State the conditions under which the foreign enterprise will be able to remit earnings and repatriate the investment. Include an estimate of the time it takes the government of the host foreign country to process an application for transfer of local currency into U. S. dollars for remitting earnings, repatriating capital, and servicing U.S. dollar debt, whichever are relevant to the investment:

Profits less withholding taxes are freely remittable.

16. ARRANGEMENTS WITH THE GOVERNMENT OF THE HOST FOREIGN COUNTRY

Briefly describe all contracts and other agreements between the government of the host foreign country and the investor or the foreign enterprise receiving the investment, and all special legislation (such as "new industry" laws), administrative determinations, and governmental decrees pertaining particularly to either the investment or the foreign enterprise. Attach copies of any documents relating to such arrangements.

None

17. EFFECT ON UNITED STATES ECONOMY, INCLUDING BALANCE OF PAYMENTS

- (A) STATE THE AMOUNT OF THE INVESTMENT EXPECTED TO BE USED FOR THE PROCUREMENT OF GOODS AND SERVICES FROM THE UNITED STATES. \$ 5,000,000 NONE
- (B) ESTIMATE ON THE BASIS OF INFORMATION PRESENTLY AVAILABLE TO YOU, IF POSSIBLE, THE AMOUNT OF GOODS AND SERVICES EXPECTED TO BE PROCURED FROM THE UNITED STATES ON A CURRENT BASIS FOR THE OPERATION OF THE PROJECT ACTIVITY RESULTING FROM THE INVESTMENT DURING THE FIRST FIVE YEARS, AS A PERCENT OF TOTAL OPERATING COSTS. _____% NONE
- (C) ESTIMATE THE ANNUAL ANTICIPATED REMITTANCE OF INTEREST OR EARNINGS AND RETURNS OF CAPITAL TO THE UNITED STATES OVER THE NEXT TEN YEARS.
\$120,000 per year as interest for nine years and \$2,120,000 in tenth year as interest and principal of loan
- (D) ESTIMATE ON THE BASIS OF INFORMATION PRESENTLY AVAILABLE TO YOU, IF POSSIBLE, THE ANNUAL AMOUNT OF IMPORTS FROM THE UNITED STATES TO THE COUNTRY IN WHICH THE INVESTMENT IS TO BE MADE EXPECTED TO BE DISPLACED BY THE END PRODUCT OF THE PROJECT ACTIVITY RESULTING FROM THE INVESTMENT.
\$ 200,000 NONE
- (E) INDICATE THE AMOUNT OF THE END PRODUCT FROM THE PROJECT ACTIVITY RESULTING FROM THE INVESTMENT EXPECTED TO BE IMPORTED INTO THE UNITED STATES. NONE LESS THAN 20% MORE THAN 20%

18. SIGNATURES (Each individual investor must sign, using duplicate signature pages if necessary)

Investor Company By: _____
APPLICANT

IF INVESTOR IS A FOREIGN SUBSIDIARY, ALSO FILL IN BELOW:

UNITED STATES PARENT CORPORATION By: _____

TITLE

SEND THREE (3) COPIES OF APPLICATION TO:

**INVESTMENT GUARANTIES DIVISION
 OFFICE OF DEVELOPMENT FINANCE AND PRIVATE ENTERPRISE
 AGENCY FOR INTERNATIONAL DEVELOPMENT
 DEPARTMENT OF STATE
 WASHINGTON, D. C. 20523**

APPENDIX C

Legislation Pertaining to the A.I.D. Specific Risk Investment Guaranty Program as of September 1966

FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

TITLE III—INVESTMENT GUARANTIES

SEC. 221.⁵⁰ GENERAL AUTHORITY.—(a) In order to facilitate and increase the participation of private enterprise in furthering the development of the economic resources and productive capacities of less developed friendly countries and areas, the President is authorized to issue guaranties as provided in subsection (b) of this section of investments in connection with projects, including expansion, modernization, or development of existing enterprises, in any friendly country or area with the government of which the President has agreed to institute the guaranty program. The guaranty program authorized by this title shall be administered under broad criteria, and each project shall be approved by the President.

(b) The President may issue guaranties to eligible United States investors

(1) assuring protection in whole or in part against any or all of the following risks:

(A) inability to convert into United States dollars other currencies, or credits in such currencies, received as earnings or profits from the approved project, as repayment or return of the investment therein, in whole or in part, or as compensation for the sale or disposition of all or any part thereof,

(B) loss of investment, in whole or in part, in the approved project due to expropriation or confiscation by action of a foreign government, and

(C) loss due to war, revolution, or insurrection:

Provided, That the total face amount of the guaranties issued under this paragraph (1) outstanding at any one time shall not exceed \$7,000,000,000; and

• • •

(c) No guaranty shall exceed the dollar value, as of the date of the investment, of the investment made in the project with the approval of the President plus earnings or profits actually accrued on said investment to the extent provided by such guaranty, nor shall any guaranty of an equity investment extend beyond twenty years from the date of insurance.

⁵⁰ 22 USC § 2181.

(d) The President shall make suitable arrangements for protecting the interests of the United States Government in connection with any guaranty issued under section 221(b), including arrangements with respect to the ownership, use, and disposition of the currency, credits, assets, or investment on account of which payment under such guaranty is to be made, and any right, title, claim, or cause of action existing in connection therewith.

SEC. 222.⁵⁷ GENERAL PROVISIONS.—(a) A fee shall be charged for each guaranty in an amount to be determined by the President. In the event the fee to be charged for a type of guaranty authorized under sections 221(b) and 224⁵⁸ is reduced, fees to be paid under existing contracts for the same type of guaranty may be similarly reduced.

(b) All fees collected in connection with guarantees issued under sections 221(b) and 224⁵⁹ under section 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended,⁶⁰ and under section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (22 U.S.C. 1509 (b)(3)) (exclusive of fees for informational media guaranties heretofore or hereafter issued pursuant to section 1011 of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1442) and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended), shall be available for meeting management and custodial costs incurred with respect to currencies or other assets acquired under guaranties made pursuant to sections 221(b) and 224⁶⁰ of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), and to pay the costs of investigating and adjusting (including costs of arbitration) claims under such guaranties, and shall be available for expenditure in discharge of liabilities under guaranties made pursuant to such sections, until such time as all such property has been disposed of and all such liabilities have been discharged or have expired, or until all such fees have been expended in accordance with the provisions of this section.

(c) In computing the total face amount of guaranties outstanding at any one time for purposes of paragraph (1) of section 221(b), the President shall include the face amounts of outstanding guaranties theretofore issued pursuant to such paragraph, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended, but shall exclude informational media guaranties.

⁵⁷ 22 USC § 2182.

⁵⁸ Sec 104(b) of the FAAct of 1963 substituted "sections 221(b) and 224" for "section 221(b)".

⁵⁹ Sec. 104(b) of the FAAct of 1963 substituted "sections 221(b) and 224" for "section 221(b)".

⁶⁰ 22 USC §§ 1872 1933.

(d)⁶¹ Any payments made to discharge liabilities under guaranties issued under sections 221(b) and 224 of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), shall be paid first out of fees referred to in section 222(b) as long as such fees are available, and thereafter shall be paid out of funds, if any, realized from the sale of currencies or other assets acquired in connection with any payments made to discharge liabilities under such guaranties as long as such funds are available, and thereafter shall be paid out of funds heretofore appropriated for the purpose of discharging liabilities under the aforementioned guaranties, and thereafter out of funds realized from the sale of notes issued under section 413(b)(4)(F) of the Mutual Security Act of 1954, as amended, and section 111(c)(2) of the Economic Cooperation Act of 1948, as amended, and finally out of funds hereafter made available pursuant to section 222(f).

(e)⁶² All guaranties issued prior to July 1, 1956, all guaranties

⁶¹ Subsection (d) was amended by Sec. 104(d) of the FAAct of 1963. It formerly read as follows:

“(d) Any payments made to discharge liabilities under guaranties issued under section 221(b) of this part, section 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), shall be paid first out of funds specifically reserved for such payment pursuant to the proviso to the second sentence of section 222(c), and thereafter shall be paid out of fees referred to in section 222(b) as long as such fees are available, and thereafter shall be paid out of funds, if any, realized from the sale of currencies or other assets acquired in connection with any such guaranties as long as such funds are available, and finally shall be paid out of funds realized from the sale of notes issued under section 413(b)(4)(F) of the Mutual Security Act of 1954, as amended, and section 111(c)(2) of the Economic Cooperation Act of 1948, as amended, and out of funds made available pursuant to this title.”

⁶² Subsection (e) was amended by Sec. 104(e) of the FAAct of 1963. It formerly read as follows:

“(e) All guaranties issued prior to July 1, 1956 (exclusive of informational media guaranties), all guaranties issued under section 202(b) of the Mutual Security Act of 1954, as amended, may be considered, and all other guaranties shall be considered for the purposes of section 3679 (31 U.S.C. 665) and section 3732 (41 U.S.C. 11) of the Revised Statutes, as amended, as obligations only to the extent of the probable ultimate net cost to the United States Government of all outstanding guaranties. Funds obligated in connection with guaranties issued under section 221(b) of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), shall constitute a single reserve, together with funds available for obligation hereunder but not yet obligated, for the payment of claims under all guaranties issued under such sections: *Provided*, That funds obligated in connection with guaranties issued prior to July 1, 1956, and guaranties issued under section 202(b) of the Mutual Security Act of 1954, as amended, shall not, without the consent of the investor, be available for the payment of claims arising under any other guaranties. Funds available for obligation hereunder shall be decreased by the amount of any payments made to discharge liabilities, or to meet management and custodial costs incurred with respect to assets acquired, under guaranties issued pursuant to section 221(b) of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), and shall be increased by the amount obligated for guaranties as to which all liability of the United States Government has been terminated, and by the amount of funds realized from the sale of currencies or other assets acquired in connection with any payments made to discharge liabilities, and the amount of fees collected, under guaranties issued pursuant to such sections (exclusive of informational media guaranties).”

issued under sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and all guaranties heretofore or hereafter issued pursuant to this title shall be considered contingent obligations backed by the full faith and credit of the Government of the United States of America. Funds heretofore obligated under the aforementioned guaranties (exclusive of informational media guaranties) together with the other funds made available for the purposes of this title shall constitute a single reserve for the payment of claims in accordance with section 222(d) of this part.

(f)⁶³ There is hereby authorized to be appropriated to the President such amount, to remain available until expended, as may be necessary from time to time to carry out the purposes of this title.

(g)⁶⁴ In making a determination to issue a guaranty under section 221(b), the President shall consider the possible adverse effect of the dollar investment under such guaranty upon the balance of payments of the United States.

SEC. 223.⁶⁵ DEFINITIONS.—As used in this title—

(a) the term “investment” includes any contribution of capital commodities, services, patents, processes, or techniques in the form of (1) a loan or loans to an approved project, (2) the purchase of a share of ownership in any such project, (3) participation in royalties, earnings, or profits of any such project, and (4) the furnishing of capital commodities and related services pursuant to a contract providing for payment in whole or in part after the end of the fiscal year in which the guaranty of such investment is made;

(b) the term “expropriation” includes but is not limited to any abrogation, repudiation, or impairment by a foreign government of its own contract with an investor, where such abrogation, repudiation, or impairment is not caused by the investor’s own fault or misconduct, and materially adversely affects the continued operation of the project; and

(c) the term “eligible United States investors” means United States citizens, or corporations, partnerships, or other associations created under the laws of the United States or any State or territory and substantially beneficially owned by United States citizens, as well as foreign corporations, partnerships, or other associations wholly owned by one or more such United States citizens, corporations, partnerships, or other associations: *Provided*, That the eligibility of a foreign corporation shall be determined without regard to any shares, in aggregate less than 5 per centum of the total of issued and subscribed share capital, required by law to be held by persons other than the United States owners.

⁶³ Subsection (f) was added by Sec. 104(b)(2) of the FAAAct of 1962.

⁶⁴ Subsection (g) was added by Sec. 104(f) of the FAAAct of 1963.

⁶⁵ 22 USC § 2183.

Appendix D

EXAMPLE OF COMPUTATION OF AMOUNTS OF COVERAGE NEEDED AND FEES DUE

This appendix, giving a hypothetical example of an investor receiving a specific risk guaranty contract, illustrates the way to determine the amounts of coverage needed and to calculate the fees due for such coverages. The example does not attempt to cover all problems which may arise, but may be of assistance to investors in determining coverages and fees.

An eligible investor on July 1, 1964, makes the following investment in a newly formed foreign enterprise, the FE Co.:

- \$200,000 to purchase a 50% interest in the FE Co., which issues 2,000 shares of its common stock in return. At the same time, other investors pay \$200,000 for the remaining 2,000 shares.
- \$100,000 loaned to the FE Co., repayable in five equal annual installments commencing two years after drawdown (July 1, 1966), interest at 6% per year. This loan is FE Co.'s only long-term debt.

The proceeds of the investment in the FE Co., will be used for working capital and for constructing a new plant in an underdeveloped country which will be finished and operational on December 1, 1965, but completely paid for on July 1, 1964. No earnings are expected during the first year. A.I.D. will sign the guaranty contract on July 1, 1964, and the first Contract Period will therefore be from July 1, 1964 to June 30, 1965.

The tangible property of FE Co. ("Covered Property" in the terminology of the Contract of Guaranty) is \$400,000 during the first year. Thereafter, this example assumes that the value of the tangible property will remain the same each year; (e.g., newly acquired property will exactly equal the amount of the depreciation charged on the FE Co.'s existing tangible property). Earnings will be in intangible property, e.g., working capital, accounts receivable, etc., so that by June 30, 1984, when the guaranty contract terminates, the total intangible property for the FE Co. will equal \$400,000.

The investor would like the highest amount of coverage that will be beneficial to him against each of the risks.

Convertibility—Coverage A

The Maximum Amount available for convertibility on the investor's total investment (covering both debt and equity) is the sum of the equity investment (\$200,000) and 100% of the equity investment to cover future retained earnings (\$200,000) plus the amount of the principal (\$100,000) plus the total interest payable over the life of the loan (\$24,000), i.e., \$524,000.

The Current Amount elected for any Contract Period should be the sum of the principal and interest payments on the debt plus any dividend or other payment on the equity shares. The amount of principal and interest payments expected during the first and second Contract Periods is \$6,000 per year (interest only). As the plant will not be operational until December 1, 1965, the investor does not expect to receive any dividends or other payments on his equity shares during the first Contract Period and therefore does not expect any convertibility problems during this period. He therefore elects a Current Amount of \$6,000 for the first Contract Period. In each succeeding Contract Period the Current Amount elected should be equal to the amount of dividends anticipated during such period plus any estimated return of capital plus the interest for the year on the loan, plus any principal repayments (in this case the principal and interest payments will be \$26,000 in the third year, and etc.).

The fee for this Coverage A for the first Contract Period would be \$533:

$$\begin{array}{r}
 1/4\% \text{ of the Current Amount } (\$6,000) = \$ 15 \\
 1/10\% \text{ of the Standby Amount } * (\$518,000) = 518 \\
 \hline
 \underline{\underline{\$533}}
 \end{array}$$

Expropriation—Coverage B

The Maximum Amount available under this coverage is the equity investment plus 100% of the amount invested to cover possible future retained earnings, plus the total of the loan (\$100,000) plus the total interest (\$24,000), i.e., \$524,000.

For the first Contract Period, the Current Amount elected should be the amount of the investment (\$200,000) plus estimated retained earnings (\$0) as of the end of the Contract Period, plus one year's interest on the loan (\$6,000), plus the principal outstanding on the loan (\$100,000), being the extent of the investor's exposure to risk of expropriation during the first Contract Period (a total of \$306,000). In succeeding years, the Current Amount elected should be equal to the amount of the investment adjusted for retained earnings or losses and returns of capital, plus the outstanding principal due on the loan plus one year's interest. As the principal is reduced, there will be a greater amount of coverage left for retained earnings.

The fee for this Coverage B for the first Contract Period would be \$1,348:

$$\begin{array}{r}
 1/2 \text{ of the Current Amount } (\$306,000) = \$1,530 \\
 1/10\% \text{ of the Standby Amount } * (\$218,000) = 218 \\
 \hline
 \underline{\underline{\$1,748}}
 \end{array}$$

War, Revolution and Insurrection—Coverage C

The Maximum Amount under this coverage should reflect the greatest interest that the investor as both an equity and a debt investor could have in the depreciated value of the tangible property of the foreign enterprise. As an equity shareholder, the investor's interest in

* The Standby Amount is the difference between the Maximum Amount and the Current Amount.

the tangible property at any given time ("Investor's Share" in the terminology of the Contract of Guaranty) is determined by multiplying the depreciated value of the tangible property by the following fraction:

$$\frac{\text{Investor's investment in equity less returns of investment and adjusted for pro rata retained earnings, losses, and realized capital gains and losses}}{\text{capital+surplus+long term liabilities+current portion}}$$

In this example, the fraction during the first Contract Period (there being no retained earnings or losses or surplus), is as follows:

$$\frac{\$200,000}{\$400,000 + \$100,000} = \frac{2}{5} = 40\%$$

In subsequent Contract Periods, the fraction will be different depending primarily upon the amount of earnings retained in the enterprise or losses suffered by it, and upon the rate at which the long-term liabilities are repaid in relation to the rate at which new long-term liabilities are incurred. In the example, on July 1, 1972, (when the debt has been fully paid off), and assuming that (a) no other long-term liabilities is incurred, (b) no earnings are retained in the enterprise beyond those needed to pay off the long-term liability, (c) no losses occur, and (d) no new equity is issued, the fraction will be as follows:

$$\frac{\$250,000}{\$500,000} = \frac{1}{2} = 50\%$$

The depreciated value of the tangible assets of the foreign enterprise in the first Contract Period is in this example \$400,000. During the duration of the guaranty contract, this amount might increase (if the rate at which new tangible assets are acquired exceeds the rate at which the existing tangible property is depreciated) or decrease (if the rate at which new tangible assets are acquired is less than the rate at which the existing tangible property is depreciated). In the example, however, we have assumed that the newly acquired property will exactly equal the amount of depreciation charges with the result that the value of the tangible assets remains constant at \$400,000.

The Maximum Amount, reflecting the greatest equity interest the investor will have in the tangible property of the enterprise during the life of the guaranty contract, can only be determined with any degree of accuracy by (1) estimating the value of the depreciated tangible property for each future year, (2) estimating the fraction which determines the investor's interest in that tangible property for the same periods, and (3) multiplying these two items for each period which will give an estimate of the investor's interest in the tangible property of the enterprise for each Contract Period.

The Current Amount for the equity investment represents the investor's interest in the depreciated tangible property of the enterprise

* The Standby Amount is the difference between the Maximum Amount and the Current Amount.

during each Contract Period. In the first Contract Period in this example, the Current Amount is determined by multiplying the depreciated value of the tangible property of the enterprise (\$400,000) by the investor's interest in such tangible property (40%), i.e., \$160,000.

The Current Amount under this coverage for any Contract Period for an investor holding debt securities is calculated by multiplying the depreciated value of the tangible property of the foreign enterprise by the following fraction, representing the investor's interest in the depreciated value of the tangible property arising out of his guaranteed loan:

$$\frac{\text{unpaid principal} + \text{accrued unpaid interest}}{\text{capital} + \text{surplus} + \text{long term liabilities (including current portion)}}$$

(For the purposes of this example, the accrued but unpaid interest has been disregarded). The Current Amount for the first Contract period will therefore be the product of \$400,000 (tangible property) and 20% for the investor's debt interest (investor's share fraction), i.e., \$80,000. In subsequent Contract Periods, the Current Amount will be less as the loan is paid off, because the fraction, representing the investor's interest in the depreciated value of the tangible property, will be smaller.

The Maximum Amount and the Current Amount in this example will be the same for the first Contract Period. This is because the investor's share, attributable to the guaranteed loan, in the tangible property will be the greatest before payments of principal have begun. The investor's exposure to the risk of damage due to war, revolution or insurrection will be reduced as principal payments are made. Therefore there is no need to reserve the right to increase the Current Amount over its amount during the first Contract Period.

If the Investor had only an equity or only a debt investment, the Maximum and Current Amounts would be arrived at in the same fashion as each respective part of the combined debt-equity coverage has been arrived at.

The fee for this Coverage C for the first Contract Period would be \$1,240.00

$$\begin{array}{r} 1/2\% \text{ of the Current Amount } (\$240,000) = \$1,200 \\ 1/10\% \text{ of the Standby Amount* } (\$ 40,000) = \quad 40 \\ \hline \underline{\underline{\$1,240}} \end{array}$$

CONCLUSION

The Maximum Amount of the guaranty that may be issued in this example is:

Inconvertibility Coverage A	Expropriation Coverage B	War Coverage C
\$524,000	\$524,000	\$280,000

* The Standby Amount is the difference between the Maximum Amount and the Current Amount.

The Current Amount of guaranty coverage which is to be in force during the first Contract Period in the example is:

Inconvertibility Coverage A	Expropriation Coverage B	War Coverage C
\$6,000	\$306,000	\$240,000

The fee for the whole guaranty contract for the first Contract Period is \$3,521.00.

APPENDIX E

COUNTRIES WHERE INVESTMENT GUARANTY AGREEMENTS HAVE BEEN SIGNED—SEPTEMBER, 1966

Convertibility	Expropriation	War, Revolution & Insurrection	Extended Risk
Afghanistan	Afghanistan	*Afghanistan	—
Argentina	¹ Argentina	¹ Argentina	¹ Argentina
Bolivia	Bolivia	Bolivia	Bolivia
Brazil	Brazil	Brazil	Brazil
British Honduras	British Honduras	British Honduras	British Honduras
Central African Republic	Central African Republic	Central African Republic	Central African Republic
Ceylon	Ceylon	Ceylon	Ceylon
Chad	Chad	Chad	Chad
Chile	Chile	Chile	Chile
China, Republic of	China, Republic of	China, Republic of	China, Republic of
Colombia	Colombia	Colombia	Colombia
² Congo (Brazzaville)	² Congo (Brazzaville)	² Congo (Brazzaville)	² Congo (Brazzaville)
Congo (Leopoldville)	Congo (Leopoldville)	Congo (Leopoldville)	Congo (Leopoldville)
Costa Rica	Costa Rica	¹ Costa Rica	¹ Costa Rica
Cyprus	Cyprus	Cyprus	Cyprus
Dahomey	Dahomey	Dahomey	Dahomey
Dominican Republic	Dominican Republic	Dominican Republic	Dominican Republic
Ecuador	Ecuador	Ecuador	Ecuador
El Salvador	El Salvador	—	—
Ethiopia	Ethiopia	—	—
Gabon	Gabon	Gabon	Gabon
Ghana	Ghana	—	—
Greece	Greece	Greece	Greece
² Guatemala	² Guatemala	—	—
Guinea	Guinea	Guinea	Guinea
Guyana	Guyana	Guyana	Guyana
Haiti	Haiti	—	—
Honduras	Honduras	Honduras	Honduras
India	India	India	India
Iran	Iran	—	—
Israel	Israel	Israel	Israel
Ivory Coast	Ivory Coast	Ivory Coast	Ivory Coast
Jamaica	Jamaica	Jamaica	Jamaica
Jordan	Jordan	Jordan	Jordan
Kenya	Kenya	Konya	Kenya
Korea	Korea	Korea	Korea
Laos	Laos	Laos	Laos
Liberia	Liberia	Liberia	Liberia
Malagasy	Malagasy	Malagasy	Malagasy
Malaysia	Malaysia	Malaysia	Malaysia
Mali	Mali	Mali	Mali (continued)

¹ Although applications will be accepted, guaranties cannot be processed until agreement is ratified by country's legislative body and in force.

² Restricted availability.

*Includes only guaranties against loss due to damage from war.

**COUNTRIES OR AREAS WITH INVESTMENT GUARANTY
AGREEMENT (continued) SEPTEMBER, 1966**

Convertibility	Expropriation	War, Revolution & Insurrection	Extended Risk
Mauritania	Mauritania	Mauritania	Mauritania
Morocco	Morocco	Morocco	Morocco
Nepal	Nepal	Nepal	Nepal
Nicaragua	Nicaragua	Nicaragua	Nicaragua
Niger	Niger	Niger	Niger
Nigeria	Nigeria	_____	_____
Pakistan	Pakistan	_____	_____
Panama	Panama	*Panama	_____
Paraguay	Paraguay	Paraguay	Paraguay
Peru	_____	_____	_____
Philippines	Philippines	_____	_____
Portugal	Portugal	_____	_____
Qu'aiti State (Fed. of So.Arabia)	Qu'aiti State (Fed. of So.Arabia)	Qu'aiti State (Fed. of So.Arabia)	Qu'aiti State (Fed. of So.Arabia)
¹ Rwanda	¹ Rwanda	¹ Rwanda	¹ Rwanda
Senegal	Senegal	Senegal	Senegal
Sierre Leone	Sierre Leone	Sierre Leone	Sierre Leone
Singapore	Singapore	Singapore	Singapore
Somalia	Somalia	Somalia	Somalia
² Spain	² Spain	_____	_____
Sudan	Sudan	Sudan	Sudan
Tanzania	Tanzania	Tanzania	Tanzania
Thailand	Thailand	*Thailand	_____
Togo	Togo	Togo	Togo
Trinidad-Tobago	Trinidad-Tobago	Trinidad-Tobago	Trinidad-Tobago
Tunisia	Tunisia	Tunisia	Tunisia
Turkey	Turkey	Turkey	Turkey
Uganda	Uganda	Uganda	Uganda
Upper Volta	Upper Volta	Upper Volta	Upper Volta
U.A.R. (Egypt)	U.A.R. (Egypt)	U.A.R. (Egypt)	U.A.R. (Egypt)
¹ Uruguay	¹ Uruguay	_____	_____
Vietnam	Vietnam	Vietnam	Vietnam
Venezuela	Venezuela	Venezuela	Venezuela
² Yugoslavia	² Yugoslavia	_____	_____
Zambia	Zambia	Zambia	Zambia

Although the Mutual Security Act of 1959 excluded economically developed countries for purposes of the Investment Guaranty Program, guaranties are still available for the underdeveloped overseas dependencies of the following countries:

Denmark	Denmark	_____	_____
France	France	_____	_____
Netherlands	Netherlands	_____	_____
Norway	Norway	_____	_____
United Kingdom	_____	_____	_____

The following countries also had agreed to participate in the Investment Guaranty Program, but due to the Mutual Security Act of 1959 guaranties are no longer issued there: Austria, Belgium, Finland, Germany, Ireland, Italy, Japan and Luxembourg.

Cuba signed the agreement in 1957 for convertibility and expropriation, but due to conditions existing in that country the program is inoperative.

¹ Although applications will be accepted, guaranties cannot be processed until agreement is ratified by country's legislative body and in force.

² Restricted availability.

*Includes only guaranties against loss due to damage from war.

APPENDIX F

CHECKLIST OF REASONS RENDERING INVESTMENTS INELIGIBLE FOR SPECIFIC RISK INVESTMENT GUARANTIES

This is a list of the principal reasons for which an application for specific risk investment guaranties, or the pertinent part of such application, may be rejected. It is not controlling, and it is not definitive, but it is offered as a useful checklist and guide.

A. Identity of The Investor

1. *Citizenship and Ownership*—The Investor does not meet the requirement of United States citizenship as established in the statute, and also if a corporation, partnership, or association, the additional statutory requirement of substantial beneficial ownership by United States citizens.

2. *Reputation*—The Investor or his associates are of such bad reputation that the U.S. would be significantly injured in its relations with the host country if it were associated with the project.

3. *Member of or Delegate to Congress or Resident Commissioner*—The Investor is a member of or delegate to Congress or is a resident commissioner, provided that this prohibition shall not apply to guaranty contracts entered into with a corporation for its general benefit (required by statute).

B. Identity of The Host Country and Approved by It

4. *Eligible Country or Area*—The country or area in which the investment is to be located is not a “less developed friendly country or area” as required by the statute, or is not a country or area with which or concerning which the U.S. has entered into the required bilateral agreement instituting the program in that country or area, or is a country where U.S. policy objectives prohibit issuance of guaranties.

5. *Foreign Government Approval*—The host government has not approved the project in which the investment is to be made for investment guaranty purposes, or the foreign government approval that is received is inadequate.

C. Nature of Project in Which Investment is to be Made

6. *Agricultural Commodities*—The investment is for a project of increasing the production or processing of food, feeds, and other agricultural commodities (including meats) for the purpose of export, if the food, feed, or other agricultural commodity is of a type in surplus in the U.S.

7. *Arms Production*—The investment is for the construction or operation of a munitions or armaments factory.

8. *Real Estate*—The investment is for the establishment or operation of a business engaged in purchasing and selling real estate (as contrasted with development of real estate).

9. *Hotel with Gambling*—The investment is for the construction or operation of a hotel containing a gambling operation.

10. *Alcoholic Beverages*—The investment is for the establishment or operation of a business engaged in producing alcoholic beverages.

11. *Government-Owned and Controlled Entity*—The investment is in an enterprise owned and controlled by the host foreign government without any significant participation by private enterprise.

12. *Speculation*—The principal purpose of the investment is speculation in commodities or other items.

13. *Entertainment*—The investment is for facilities devoted to entertainment such as sports stadiums, amusement parks, country clubs, golf courses.

14. *Runaway Industries*—The so-called “runaway industry” (i.e., when a going concern within the United States is closed down and re-established in a foreign country, all the time retaining and producing for essentially the same markets in the United States) may not be eligible for guaranty coverage. While guaranties may be issued for investments in foreign enterprises that plan to export their products to the United States, an investment in a runaway industry that is devoted almost entirely to production for export to the United States will not normally be eligible unless there are counter-balancing advantages.

D. Nature of the Investment

15. *Date of Investment*—The investment is not new in that it has been made in the enterprise, or at least irrevocably committed to the enterprise, prior to the date of application.

16. *Purchase of Existing Shares*—The investment adds nothing to development of the host country in that it consists of the purchase of outstanding equity shares of the enterprise from the former owner. However, such acquisition costs may be guaranteed to the extent that the purchase of such shares is matched by new investment in the enterprise.

17. *Refinancing Debt*—The investment consists of refinancing of existing debts of the enterprise. Under established guidelines, exceptions are made to the extent that debts that are mature or will mature within one year are refinanced by loans with an average maturity of six years or more; or debts which will mature within three years are refinanced by loans with an average maturity of 10 years or more.

18. *Duration of Loans or Credit*—The transaction is a sale, or is a credit or loan with an average maturity of less than three years, rather than an investment as that term is commonly understood.

19. *Supplier's Credit*—The investment is solely a short-term supplier's credit.

20. *Debt of Foreign Government* — The investment consists of goods and services for which the investor receives an obligation of a foreign government to pay money, e.g., a foreign government bond.

21. *Inconvertible Local Currency*—The funds to be invested consist of inconvertible local currency.

22. *Interest Rate on Loan*—The investment consists of a loan at what is determined to be a usurious rate of interest applying the norms and standards for the country involved.

23. *Trademark, Tradename, Goodwill*—The investment consists solely of a license for the use of a trade name, a trade mark, or good will.

24. *Source of Funds*—The U.S. Investor is only a conduit for putting non-U.S. capital into the project with benefit of A.I.D. guaranties, lacking either true risk of loss, or substantial assets, or both.

E. Effect on Economy of Host Foreign Country

25. *Development of LDC*—The investment is in a project which does not satisfy the statutory test of furthering the development of the economic resources and productive capacities of the Less Developed Country or area in which the project is located.

26. *Restrictive Trade Agreements*—The foreign government has conferred upon the project in which the investment is being made a monopoly or some other privilege which unreasonably restricts trade for a long period of time without overbalancing advantages from the viewpoint of the country's economic and social development.

27. *Foreign Exchange Considerations*—The operator of the project in which the investment is made must not impose a strain upon the foreign exchange reserves of the foreign country without overbalancing advantages to the country involved.

F. Effect on Economy of United States

28. *U.S. Balance of Payments*—The investment is to be used for procurement of goods and services outside the United States in other developed countries and does not accord with current guidelines.