

COUNCIL DIRECTIVE

of 27 October 1970

on the adoption of a common credit insurance policy for medium- and long-term transactions with private buyers

(70/510/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof;

Having regard to the proposal from the Commission;

Whereas export credit is of primary importance in international trade and an important instrument of commercial policy;

Whereas the various systems of export credit insurance in force in the Member States may give rise to distortions in competition between Community undertakings in markets in third countries;

Whereas harmonisation of the various systems of export credit insurance could facilitate co-operation between undertakings in the various Member States;

Whereas, in view of this, common policies or harmonised solutions in respect of the essential matters should be adopted by Member States in the various fields of credit insurance;

Whereas, however, guarantees for medium- and long-term risks amount in all Member States to a very high percentage of the total of guaranteed transactions;

Whereas, moreover, these medium- and long-term transactions are effected both with private buyers and with public buyers;

Whereas in view of the nature of these credits it seems appropriate to harmonise supplier credits separately from financial credits;

Whereas the adoption of a common policy for medium- and long-term transactions with private

buyers under supplier credit would be an important factor in the harmonisation of credit insurance techniques;

Whereas it is important for the Commission to obtain the opinions of the Representatives of the Member States on any problem relating to the uniform application of this Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Subject to the provisions of Annex D, Member States shall adopt such measures by law, regulation, or administrative action as may be necessary to put into force as from 1 September 1971 the 'Common Medium- and Long-Term Policy relating to Private Buyers (General Conditions)' appearing in Annex A—hereinafter called the 'common policy'—and the endorsement for extension of the guarantee (bond guaranteeing satisfactory performance of the contract) as in Annexes B and B/1.

2. In interpreting the common policy and the endorsement, the Member States shall follow the attached Explanatory Notes (Annexes C and C/1).

Article 2

Member States shall ensure that credit insurance organisations guaranteeing for the account of or with the support of the State insure transactions which are covered by the common policy in accordance with the terms laid down in that policy and such specific rules as are adopted by the Council.

Article 3

1. The common policy shall cover transactions guaranteed under specific policies and which:

- include either a credit risk of twenty-four months or more, or a manufacturing risk of twelve months or more, or a combination of both these risks for a cumulative period of twenty-four months or more;
- involve a private buyer;
- and are on a supplier credit basis.

2. Transactions for which the common policy is appropriate may be guaranteed solely against political risks or against both political and commercial risks. In both cases, the basic conditions of paragraph 1 shall apply.

3. The provisions of the common policy shall apply also to cover of the risks incurred by the exporter for transactions financed under financial credits where the credit may not be used before the commencement of the credit risk.

Article 4

For the purposes of the common policy, a private buyer is any buyer other than one who, in one form or another, represents the public power itself (States, regional or local authorities having a subordinate status such as provinces or local government units; public undertakings) and who cannot, either judicially or administratively, be made insolvent.

Article 5

The Advisory Committee for Export Credit Insurance, set up under Article 4 of the Council Directive of 27 October 1970¹ on the adoption of a common credit insurance policy for medium- and long-term transactions with public buyers, may be consulted by the Commission on any problem relating to the uniform application of this Directive.

Article 6

The Commission shall, within two years of the entry into force of the common policy and after consultation with the Committee referred to in Article 5, present a report on experience acquired during the application of Articles 3 and 13 of the Common policy. It may make proposals for amendments to these provisions with a view to adapting them to specific needs which the application of these provisions has not been able to meet. That report may, however, be presented at any time if a Member State so requests; it shall be submitted as a matter of urgency to the Council.

Article 7

This Directive is addressed to the Member States.

Done at Luxembourg, 27 October 1970.

For the Council

The President

A. MÖLLER

¹ Council Directive No 70/509/EEC, OJ No L 254, 23.11.1970, p. 1.

ANNEX A

COMMON CREDIT INSURANCE POLICY

Medium- and long-term transactions with private buyers

GENERAL CONDITIONS

The general conditions are hereby laid down upon which¹, hereinafter called 'the Company', will indemnify the insured for losses which he may suffer, under the contract described in the special conditions, hereinafter called 'the contract', in the event of the materialisation of one of the risks covered, as listed in these general conditions.

CHAPTER I

SCOPE OF THE GUARANTEE

*Article 1***Manufacturing risk**

The manufacturing risk shall materialise when performance of the contractual obligations of the insured, or manufacture of the goods ordered, is suspended for a period of six months in so far as the direct cause of such suspension is the occurrence of one or more of the events listed in paragraphs B, C, D, E, G and H of Article 3 to the exclusion of all other events or, when the occurrence of one or more of such events is threatened, by a decision of the Company.

Where despite the occurrence of any such event manufacture is continued because of a decision of the Company and subsequently, through either the continuation of that event or the occurrence of a further event, complete performance of the contractual obligations of the insured proves impossible or is judged inopportune by the Company, the manufacturing risk shall materialise on the date of suspension or completion of manufacture provided six months have elapsed since the occurrence of the event which was the initial cause, or since the initial decision of the Company, as referred to in the preceding paragraph.

*Article 2***Credit risk**

The credit risk shall materialise when the insured finds it impossible to recover all or part of the amount owed to him within six months of its due date, subject to this non-recovery being directly caused by the occurrence of one or more of the events listed in Article 3, to the exclusion of all other events.

However, where the impossibility of recovery is directly caused by one of the events listed in paragraphs A, B and E of Article 3 the credit risk shall materialise as follows:

- in the case of paragraph A, nine months from maturity of the unpaid debt,
- in the case of paragraph B, at the time of insolvency,
- in the case of paragraph E: six months from completion of the formalities necessary in order to obtain transfer to the insured's account of sums paid by the debtor in respect of the guaranteed maturity.

¹ Belgium: Office national du dueroire
 Germany: The Federal Republic of Germany
 France: Compagnie française d'assurance pour le commerce extérieur
 Italy: Istituto nazionale delle assicurazioni
 Luxembourg: Office du dueroire du Luxembourg
 Netherlands: Nederlandsche Credietverzekering Maatschappij N.V.

In no case may the periods referred to above be cumulative.

When the provisions of paragraphs A and B of Article 3 are excluded by the special conditions and the maturity remains unpaid three months after its due date without any other of the events listed in that Article having made recovery by the insured impossible, the credit risk guarantee in respect of the unpaid maturity shall expire after the three month period mentioned above.

Article 3

Events constituting a cause of loss

These events shall be the following:

- A. Non-payment by the debtor at maturity
- B. Insolvency of the debtor.

Insolvency arises:

- | | | |
|------------------------|---|--|
| insolvency de jure | } | 1. at the date of an order of adjudication in bankruptcy, of an order for winding-up, of an order for administration of the debtor's affairs by the court, or at the date of a court order having equivalent effect, |
| | | 2. or at the date of conclusion of an extra-judicial agreement between the debtor and all his creditors, which is binding on every one of them, |
| | | 3. or at the date when, in the course of execution of judgment, it becomes established that the levy of execution has been fruitless or has not fully satisfied the debt, |
| insolvency de facto | } | 4. or at the date on which the insured shows that the financial state of the debtor is such that even partial payment is unlikely (and) (or) ¹ that to enforce judgment (and) (or) ¹ particularly to request that the debtor be adjudicated bankrupt or be wound up would have no other foreseeable result than one out of proportion to the costs of the proceedings. |

- C. General moratorium decreed by the government of the country of the debtor or by that of a third country through which payment must be effected.
- D. Any other measure or decision of the government of a foreign country which prevents performance of the contract.
- E. Political events, economic difficulties arising outside...² or legislative or administrative measures taken outside...² which prevent or delay the transfer of funds paid over in respect of the contract.
- F. Legal provisions adopted in the country of the debtor declaring payments made by the debtor to be valid discharge of the debt, notwithstanding that as a result of fluctuations in exchange rates such payments, when converted into the currency of the contract, no longer cover the amount of the debt at the date of transfer.
- G. The occurrence outside...² of one of the following events: war (including civil war), revolution or riot, cyclone, flood, earthquake, volcanic eruption or tidal wave.
- H. A measure or decision of the government of...² specifically relating to foreign trade, such as a ban on exports, in so far as the reason for this measure or decision is to be found in the conduct of international affairs.

Article 4

Effective date and extent of the guarantee

§ 1 — *Effective date*

The guarantee of the manufacturing risk shall take effect on the date of entry into force of the contract.

The guarantee of the credit risk shall take effect:

- either on the date of each partial dispatch or partial delivery when, by the terms of the contract, such dispatch or delivery entitles the insured to payment therefor in one or more fixed maturities;
- or alternatively, on the date on which, by the terms of the contract, completion of the contractual obligations of the insured entitles the latter to payment.

Where the contract involves, on the conclusion thereof or within sixty days thereafter, the payment

¹ Choice between these two formulae is left to each Company.

² Country of credit insurer.

of an amount on account, the opening of a confirmed or unconfirmed documentary credit, or the delivery of a transfer guarantee or a payment guarantee, the taking effect of the insurer's guarantee shall be conditional upon the completion of these formalities.

§ 2 — *Extent*

(a) Manufacturing risk

The guarantee of the manufacturing risk shall apply, within the limit of the contract amount, to the amount of the costs incurred by the insured in performing his contractual obligations or in manufacturing the goods which have been ordered from him.

It shall not apply to:

- expenditure relating to goods in respect of which the guarantee of the credit risk has taken effect within the meaning of paragraph 1 of this Article;
- premium paid by the insured to the Company;
- sums paid by the insured consequent upon the calling of a bond guaranteeing satisfactory performance of the contract.

(b) Credit risk

The guarantee of the credit risk shall apply exclusively to the amount owed to the insured in principal and interest, in so far as the maturities fall after the effective date of the guarantee (and are indicated in the special conditions).¹

However, the insured shall also be entitled to be indemnified for non-recovery of maturities due before the effective date of the guarantee of the credit risk, according to the rules applicable to the guarantee of the credit risk, provided:

- (a) that the manufacturing risk is covered; and
- (b) that the Company, availing itself of the provisions of Article 1, instructs the insured to continue manufacture, or
 - that the event referred to in paragraph F of Article 3 has occurred.

Amounts payable to the insured under an irrevocable documentary credit confirmed in . . .² are excluded in any event from the guarantee of

the credit risk. Amounts in respect of interest on arrears, penalties or damages payable by the debtor are likewise excluded.

(c) Additional costs

The guarantee shall cover additional costs resulting from a loss or threat of loss incurred with the approval of the Company, in order to avoid or limit the damage.

The following shall be considered as additional costs:

- in the event of a manufacturing loss or threat of loss, costs such as financing, stocking or costs of pursuing rights in court or otherwise;
- in the event of a credit loss or threat of loss, costs of pursuing rights in court or otherwise.

If, however, these costs also relate to amounts or maturities not guaranteed by the Company, they shall be attributed proportionately to the guaranteed and unguaranteed amounts or maturities.

Ordinary recovery costs—including protest charges—can in no case be indemnified.

(d) Supply of foreign goods

The guarantee also applies to foreign goods and services declared to the Company and approved by it. (However, the insured need not seek the agreement of the Company if the value of the foreign goods and services exceeds neither 10% of the contract amount nor 1 000 000 units of account. No increase in the approved proportion of foreign goods and services may be made without the authorisation of the Company).¹

Article 5

Threat of loss

The Company shall have the right, where one of the events listed in Article 3 occurs, or where it considers that there is the threat of such an event occurring, to require the insured to take any suitable measure to avoid the occurrence of a loss or to limit its effects, and in particular:

- (a) Where the manufacturing risk is covered, to instruct the insured to suspend manufacture or the performance of all or part of his contractual obligations.

¹ The passage in brackets is optional.

² Country of credit insurer.

The loss resulting from such action shall be indemnifiable:

- either, in derogation from Article 1, under the conditions specified for indemnification of losses on additional costs where the suspension lasts less than six months, provided that this suspension is due to a decision of the Company,
- or under the conditions specified for indemnification of manufacturing losses, where the suspension lasts not less than six months;

- (b) Where the manufacturing risk is not covered, to amend, suspend or cancel the guarantee of the credit risk in so far as it has not yet taken effect within the meaning of the second subparagraph of Article 4 (1).

Article 6

Percentage guaranteed and maximum indemnity

§ 1 — Losses shall be indemnifiable up to the guaranteed percentage stipulated in the special conditions and up to the maximum limits laid down in those conditions.

§ 2 — The insured himself shall retain exclusively for his own account responsibility for the portion not guaranteed by the Company.

Article 7

Nullities²

CHAPTER II

OBLIGATIONS OF THE INSURED

Article 8

Conduct of the transaction insured

The insured shall be required to conduct the transaction with all reasonable and usual care, skill and forethought and to follow all instructions of the Company. Accordingly:

1. The insured may not, without the express authority of the Company, agree to any modification of the terms or conditions of the contract or to the securities attached to it. (Subject, however, to a duty to give notice, the insured shall not be obliged to seek prior agreement of the Company for increases or reductions in the value of the contract which cumulatively exceed neither 10% of the initial amount nor 20 000 units of account. The same applies to extensions of delivery periods approved by the debtor in so far as the initial delivery period is not increased by more than 25% and the total extensions do not exceed three months. The Company shall have the right to withdraw this concession at any time).¹
2. (a) The insured must inform the Company as soon as he is aware of any event which might

aggravate the risk or constitute a threat of loss such as:

- difficulties encountered at receipt of goods or services, or in the drawing up or handing over of instruments of payment,
- failure of the debtor to meet his obligations, in particular failure to make payments on their due dates, indicating where known the reason for such failure;

(b) failure to recover must in any event be declared to the Company within thirty days.

3. The insured must consult the Company immediately in the event of a threat of loss and must abide by its decisions without in particular being able to plead financing difficulties. Such decisions may include the surrender to the Company of the conduct of all negotiations and proceedings undertaken or to be undertaken. To this end the Company may require an irrevocable power of attorney and even the submission or transfer to it, in a form effective against third parties, of all documents and deeds whatsoever which establish the rights deriving from the contract, or which are merely useful to the exercise of these rights.

¹ The passage in brackets is optional.

² This Article is optional.

As regards the guaranteed maturities, in particular the portion for which he retains responsibility in accordance with Article 6 (2), the insured must, where the Company considers it necessary, comply with the latter's decisions and bear all the consequences thereof, particularly when they relate to debt consolidation agreements which the Company may have entered into or to which it may have adhered or which it is responsible for carrying out.

4. The insured shall be required to provide the Company, its agents and the experts designated by it with all information and documents which it may consider necessary for verifying the accounts and operations of the insured and for examining the validity of his claims. No action of this kind shall give rise to any liability on the part of the Company. Any document drawn up in a foreign language shall, at the request of the Company, be translated by the insured.
5. Without prejudice to the provisions of Article 4 (2) (c), the insured shall bear all costs involved in the application of this Article.

Article 9

Declarations on the conduct of the transaction¹

Article 10

Premium

§ 1 — Conclusion of the insurance contract shall render the insured liable for payment of the premium, the amount and terms of payment of which are stipulated in the special conditions.

§ 2 — Where appropriate, the Company shall grant a partial refund of the premium to take account, in the absence of loss, of the reduction in the amount or duration of the risks.

In the case of a manufacturing loss the Company will make a revised calculation of the premium, taking into account the reduction in the amount to which the credit risk is covered.

§ 3 — Whatever the grounds on which they may be granted, premium refunds shall be subject to

¹ This Article is optional.

standard deductions of 10% of the premium refundable to cover the expenses of the Company, with a minimum of 50 units of account for each refund and an overall maximum of 1 000 units of account.

§ 4 — Where the contract is amended, the premium shall be adjusted without prejudice to the provisions of paragraph 2 above. (Amendments to the amount of the contract which cumulatively do not exceed 2 000 units of account shall not require adjustment of the premium.)²

§ 5 — Any failure to pay a premium instalment and any application to be indemnified shall entitle the Company to demand immediate payment by the insured of any unpaid portion of the full premium.

§ 6 — Receipt of the premium shall not in itself oblige the Company to accept liability for a loss, such acceptance being subject in every case to the general and special conditions of the policy.

Article 11

Penalties for non-fulfilment of the obligations of the insured

§ 1 — Failure by the insured to pay all or part of the premium or any sum owed to the Company shall automatically suspend the obligations of the Company. The Company shall be finally released from its obligations fifteen days after a formal notice to the insured has proved ineffective.

(The penalties referred to above shall not preclude the enforcement of the obligations of the insured.)²

§ 2 — Any sum payable by the insured to the Company under this policy which has not been paid within one month of its falling due shall automatically be subject (whether or not formal notice has been given)² to interest at the rate of ...³ calculated from its due date.

In the case of indemnification being paid in error, interest shall run in any event from the date of payment of the indemnity.

² The passage in brackets is optional.

³ Rate to be determined by the national credit insurer.

§ 3 — If the insured fails to carry out the obligations laid down in Articles 6 and 8 or if through any fault of his the risk is aggravated, he shall automatically (whether or not formal notice has been given)¹ forfeit the rights conferred on him by the policy, and shall be obliged to repay all indemnification received thereunder.

However, the Company (may restrict) (will restrict, if there are grounds for so doing)³ the extent of this forfeiture, having regard mainly to the degree of fault or failure.

§ 4 — (.....).⁴

CHAPTER III

INDEMNITIES

Article 12

General principles

§ 1 — All payment of indemnity shall be subject to:

- (a) submission of a declaration of loss, in the form of a request for indemnification accompanied by all information and documents considered necessary by the Company to establish the rights of the insured and by a statement of losses.
- (b) (production of a mandate given by the insured to the bank responsible for collection of amounts due under the contract and accepted by the bank, to transfer directly to the Company, up to the amount due to the latter under the subrogation provided for in Article 16, all such recoveries as it may receive).²

§ 2 — If the losses for which the insured applies to be indemnified relate to rights which are in dispute, the Company may reject the declaration of loss until the dispute is settled by the court having jurisdiction.

The Company may also reject the declaration of loss under the provisions of paragraph B (1) of Article 3 until the insured has furnished proof that the debt has been admitted as a liability of the insolvent debtor.

§ 3 — The Company shall have the right to appoint, within sixty days of the later of the two following dates:

- expiry date of the qualifying period for the claim,
- date of submission of the statement of losses and other documents referred to in paragraph 1 above,

an expert paid in accordance with Article 19, who is to be responsible for verifying the amount of loss for which the insured applies for indemnification.

¹ The passage in brackets is optional.

² The whole of the subparagraph in brackets is optional.

§ 4 — There shall be no indemnification for losses resulting from:

- (a) failure by the insured or by any of his agents, co-contractors or sub-contractors to perform the terms and conditions of the contract, or his obligations under any laws or regulations applicable to the conclusion and performance thereof, unless such failure is a direct consequence of one of the events constituting a cause of loss listed in Article 3 to the exclusion of all other events, or of a decision of the Company;
- (b) failure of the debtor to obtain, on or before the effective date of the guarantee, import licences or other authorisations necessary for performance of the contract under the laws or regulations in force at that time, with the exception of those which could only be obtained subsequently;
- (c) failure of the debtor to complete the formalities which, under the laws or regulations applicable at the effective date of the guarantee, he must carry out before that date;
- (d) the operation of a term of the contract (penalty clause, termination clause, *force majeure* clause, etc.) restricting the rights of the insured in some unusual way.

§ 5 — When the obligations of the debtor with respect to the insured have been guaranteed wholly or in part by a third party, there can only be a claim to the extent that the insured:

- is unable to obtain, from either the debtor or his guarantor, performance of all or part of their

³ Choice between these two formulae is left to each Company.

⁴ In this section there may be inserted the provisions relating to the penalties laid down in case of failure by the insured to fulfil his obligations in respect of declarations on the conduct of the transaction when an Article 9 has been included in the policy. The content of these provisions is left to the discretion of each Company.

contractual obligations, provided that this is due to the occurrence of one or more of the events listed in Article 3,

- and has properly carried out the steps and formalities necessary to render the guarantor or guarantors liable in respect of their commitments.

§ 6 — In applying the rules for indemnification no account shall be taken of the loss, whether through the operation of a clause providing for accelerated payment or from any other cause, of the debtor's right to pay on credit terms. However, the Company shall be entitled to pay the indemnity in advance. In such a case, interest which has not accrued will not be indemnified.

Article 13

Appropriation of payments received and of proceeds from the realisation of securities

Payments of all kinds, whether made by the debtor or his guarantors or on their behalf, together with proceeds from the realisation of securities shall in the event of a loss be appropriated without regard to the relationship between the parties and in accordance with the following rules:

1. Payments received shall be appropriated first to principal, interest (excluding interest on arrears) and additional costs under all guaranteed and unguaranteed contracts concluded with the debtor:
 - (a) sums attributed to transactions or maturities guaranteed under the contract shall be appropriated in the chronological order in which they fall due;
 - (b) payments made before the date on which the unpaid maturity fell due shall, where they are either unattributed, or are attributed to unguaranteed transactions or maturities, and notwithstanding any legislative or other provisions to the contrary, be appropriated in the chronological order of guaranteed and unguaranteed maturities and, in the event of maturities coinciding, in proportion to their respective amounts;
 - (c) payments made after the date on which the unpaid maturity fell due shall, where they are either unattributed, or are attributed to unguaranteed transactions or maturities, be divided pro rata between the guaranteed and unguaranteed maturities which have either fallen due but are unpaid, or have yet to fall due; such payments shall be appropriated

within each of the two categories of maturities (guaranteed and unguaranteed) in the chronological order in which they fall due;

- (d) maturities shall include only principal and interest, excluding interest on arrears.
2. Once the principal, interest (excluding interest on arrears) and additional costs for guaranteed or unguaranteed transactions and maturities have been paid in full, sums received shall be appropriated to interest on the arrears in proportion to the product obtained by multiplying the amount of each overdue maturity by the length of the period for which it has been overdue.

Article 14

Statement of losses

§ 1 — *Manufacturing claims*

The statement of losses to be rendered by the insured in accordance with Article 12 (1) (a) shall be drawn up in ...¹ as

- (a) debit; all costs covered by Article 4 (2) (a) above and those referred to in paragraph 2 (c) of that Article which have been incurred during the qualifying period for the claim;
- (b) credit: total receipts, including:
 - all amounts received by the insured up to the date of payment of the indemnity, whether by way of payment on account or out of proceeds of the realisation of securities, and amounts received or which he would be entitled to receive by way of compensation up to the date referred to above, and any other advantage which the insured has gained as a result of the loss;
 - proceeds of resale, or the re-use value, of:
 - goods ready for dispatch or in the course of production,
 - stocks of materials,
 - indemnity payments of any kind.

§ 2 — *Credit claims*

The statement of losses to be rendered by the insured in accordance with Article 12 (1) (a) shall be drawn up in the currency of the contract as follows:

- (a) debit: the amount of each maturity of the guaranteed debt which has not been recovered,

¹ National currency of credit insurer.

(b) credit:

- all amounts received by the insured up to the date of payment of the indemnity, whether by way of payment on account of the maturity in question or out of the proceeds of the realisation of securities, and amounts received or which he would be entitled to receive by way of compensation up to the date referred to above, and any other advantage which the insured has gained as a result of the loss;
- the amount of commission and other costs which as a result of the loss the insured has been saved.

§ 3 — Claims for additional costs

The additional costs defined in Article 4 (2) (c) shall be indemnifiable on the basis of half-yearly settlements.

*Article 15***Calculation and payment of the indemnity**

(The indemnity) (Indemnities and reimbursements of additional costs)¹ shall be calculated, subject to the provisions of Article 6 (1), by application of the guaranteed percentage to the amount, as approved by the Company, of the debit balance of the statement of losses drawn up in the manner set out in Article 14. It may be reduced in the case of a manufacturing claim by the amount of any indemnities paid under the provisions of Article 4 (2) (b).

The indemnity shall be payable within ninety days of the latest of the following dates:

- expiry date of the qualifying period for the claim,
- date of submission of the statement of losses and other documents referred to in Article 12 (1),
- date of submission of the expert's report when the Company has had recourse to the provisions of Article 12 (3).

Where the Company has had recourse to the provisions of Article 12 (3) and the indemnity has not been paid by the Company within one hundred and twenty days of the later of the two following dates:

- expiry date of the qualifying period for the claim,
- date of submission of the statement of losses and other documents referred to in Article 12 (1),

an indemnity equal to three quarters of the guaranteed percentage of the amount of the loss as estimated by the Company—subject to subsequent

adjustment—shall be paid at the end of the above-mentioned period of one hundred and twenty days.

If the amount of this indemnity proves to be greater than that determined by the Company after expert examination, the excess must be repaid to the Company on demand.

(If after payment of an indemnity it transpires that the claim by the insured is invalid or not wholly valid, any indemnity received must be immediately repaid to the Company).²

*Article 16***Subrogation or assignment³***Article 17***Recoveries**

'Recoveries' means all sums recovered after payment of an indemnity (including amounts received as compensation), and appropriated to the contract or to the guaranteed maturities in accordance with the rules laid down in Article 13, after deduction of the recovery costs.

These recoveries shall be shared between the Company and the insured. The Company's share shall be determined according to the guaranteed percentage stipulated in the special conditions.

This rule shall also apply to sums appropriated to payment of interest on arrears, to the exclusion, however, of that portion of such sums which relates to the period prior to the date of payment of indemnity. This portion shall be retained by the insured in full, on condition that the principal, interest (excluding interest on arrears) and additional costs have been recovered.

However, in the case of a manufacturing claim, the insured shall receive all recoveries to the extent that they exceed the indemnity paid in respect of the losses indemnified thereunder, plus interest at 5% per annum from the date of payment of the indemnity.

Out of the sums which the insured has collected directly, he must immediately remit to the Company the amount which is owing to it.

² The subparagraph in brackets is optional.

³ The content of the provisions to be inserted in this Article is left to the discretion of the individual Companies.

¹ Choice between these two formulae is left to each Company.

CHAPTER IV

MISCELLANEOUS PROVISIONS

*Article 18***Rates of conversion for amounts in foreign currency**

The following conversion rates shall apply:

§ 1 — *(Indemnity) (Indemnities and reimbursement of additional costs)*¹

- (a) Amounts referred to in Article 14 (1) and (3): conversion shall be made into ...² at the official rate on the date of payment;
- (b) amounts appearing as credits in the statement of losses under Article 14 (2) (b) shall be converted into the currency of the contract at the official rate on the date of payment.

The debit balance of this statement of losses shall be converted into ...² at the official rate (on the date of expiry of the period referred to in Article 2) (on the date of payment of the indemnity).¹

The rate applied shall not, however, exceed (the official rate on the date of signature of the contract, which may be stipulated in the special conditions) (the rate on the date when the insured is informed of the decision to grant cover, which may be stipulated in the special conditions).¹

§ 2 — *Recoveries*

The recoveries referred to in the first paragraph of Article 17 shall be converted into ...² at the official rate on the date of payment.

§ 3 — *Premium*

For all premium calculations conversion into ...² shall be made at (the official rate on the date of signature of the contract) (the rate on the date when the insured is informed of the decision to grant cover).¹

*Article 19***Cost of an expert's report**

In all cases where an expert's report is obtained, the expert's fees shall be wholly payable by the Company whenever the debit balance of the statement of losses does not exceed by more than 10% the loss as determined by the expert. If the excess of the debit balance is 20% or more the expert's fees shall be wholly payable by the insured.

If the excess of the debit balance is more than 10% but less than 20%, the cost of the expert's fees shall be shared equally between the insured and the Company.

*Article 20***Transfer of right to indemnity³***Article 21***Limitation³***Article 22***Jurisdiction³**

¹ Choice between these two formulae is left to each Company.

² National currency of the credit insurer.

³ This Article is optional.

ANNEX B

ENDORSEMENT FOR EXTENSION OF THE GUARANTEE

Policy No

ENDORSEMENT FOR EXTENSION OF THE GUARANTEE

(Private Buyers)

(Bond guaranteeing satisfactory performance of the contract)

Between
hereinafter called 'the Company'

and
hereinafter called 'the insured'

it is agreed, under the conditions laid down in this endorsement, that the guarantee given under the general conditions of the policy referred to above shall extend to cover losses suffered by the insured consequent upon the calling of the bond given in accordance with the special conditions attached hereto¹ and in connection with performance of the contract to which the general conditions of the policy apply.

¹ Choice left to each Company to insert the special conditions in the endorsement or to list them on a separate document, annexed to the endorsement.

*Article 1***Subject-matter of the Guarantee**

1. The guarantee shall extend to losses consequent upon the calling of the bond:

- (a) where the manufacturing risk covered has materialised;
- (b) where, without a manufacturing risk materialising, the bond is called as a direct result of a measure or decision of a political nature and of general application taken by the government of a foreign country;
- (c) in all other cases, and in particular where the bond is called as a result of a dispute concerning the satisfactory performance of the contract, in so far as the insured is unable to obtain from the beneficiary of the bond compliance with an award of a competent court or arbitrator ordering the beneficiary to return the sums which he has withheld.

2. The risk covered by this endorsement shall materialise:

- (a) in the case referred to in paragraph 1 (a), according to the terms set out in Article 1 of the general conditions of the policy;
- (b) in the case referred to in paragraph 1 (b), six months after the bond is called;
- (c) in the case referred to in paragraph 1 (c), six months after the award ordering the beneficiary of the bond to return the sums which he has withheld.

3. The award referred to in paragraphs 1 (c) and 2 (c) of this Article may be a decision of a court of first instance, it need not be a final judgment.

If however, after payment of an indemnity on the ground of the impossibility of obtaining enforcement of an award which is open to appeal, a final judgment is given in favour of the beneficiary of the bond, declaring his right to the sums which he has withheld, the indemnity paid must be immediately repaid to the Company.

*Article 2***Particular conditions of cover**

1. For the application of Article 1 of this endorsement:

- (a) the third indent of Article 4 (2) (a) of the general conditions of the policy shall not apply;

(b) there shall be added:

- to Article 8 (Conduct of the Transaction Insured) of the general conditions of the policy a sixth paragraph entitled 'Performance Bond' repeating the provisions of Article 3 of this endorsement,
- to Article 14 (Statement of Losses) of the general conditions of the policy a fourth paragraph entitled 'Loss Consequent upon the Calling of the Bond', repeating the provisions of Article 4 of this endorsement,
- to Article 18 (Rates of Conversion for Amounts in Foreign Currency) paragraph 1 (Indemnities) (Indemnities and Reimbursement of Additional Costs) of the general conditions of the policy, a subparagraph (c) repeating the provisions of Article 5 of this endorsement.

2. Article 12 (2) of the general conditions of the policy shall not apply as regards the application of Article 1 (1) (c) of this endorsement.

3. The other provisions of the general conditions of the policy shall remain valid in so far as they are not contrary to the provisions of this endorsement.

*Article 3***Conduct of the transaction insured**

(See Article 8 of the general conditions of the policy)

1. The insured may not without the express authority of the Company agree to any amendment of the terms, the amount or the duration of the performance bond or the conditions for the exercise or release of rights under it.

2. The insured shall, within thirty days following the event in question, notify the Company:

- (a) of the refusal of the beneficiary of the bond to release his rights under the bond on the date provided;
- (b) of the exercise by the beneficiary of his rights under the bond or of his refusal to comply, in the time allowed, with a judgment or arbitration award ordering him to return the sums which he has withheld;
- (c) of his learning of the release of the rights under the bond.

*Article 4***Statement of losses**

(See Article 14 of the general conditions of the policy)

1. Where the loss consequent upon the calling of the bond is caused by an event referred to in Article 1 (1) (a) of this endorsement the loss suffered by the insured shall be included in the statement referred to in Article 14 (1) of the general conditions of the policy and calculated according to the provisions of those general conditions.

2. Where the loss consequent upon the calling of the bond is caused by either of the events referred to in Article 1 (1) (b) and (c) of this endorsement, the statement of losses to be produced by the insured in accordance with Article 12 (1) (a) of the general conditions of the policy shall be drawn up as follows in the currency in which that bond was expressed:

debit: the amounts paid to the beneficiary of the bond,

credit: the amounts of which the insured was able or entitled to obtain restitution in cash or in any other manner.

*Article 5***Rates of conversion for amounts in foreign currency**

(See Article 18 (1) of the general conditions of the policy)

The amounts appearing as credits in the statement of losses referred to in Article 4 (2) of this endorsement shall be converted into the currency in which the bond is expressed at the official rate on the date of payment.

The debit balance of this statement of losses shall be converted into . . .¹ at the official rate on the date of expiry of the period referred to in Article 1 (2) of this endorsement.

¹ National currency of credit insurer.

ANNEX B/1

ENDORSEMENT FOR EXTENSION OF THE GUARANTEE

(Bond guaranteeing satisfactory performance of the contract)

SPECIAL CONDITIONS

of Endorsement No

to Policy No

*Article 1***Description of the guaranteed performance bond**

(Optional)

1. Name (of the person, bank or organisation which has issued the bond):
2. Name of the beneficiary:
3. Amount of the bond (expressed in the currency of the contract):
4. Date on which the bond was given:
5. (a) Nature of the event discharging the bond:
(b) Date of expiry of validity:

*Article 2***Percentage guaranteed***Article 3***Maximum indemnity***Article 4***Premium**

1. Amount.
2. Date when payable.

ANNEX C

EXPLANATORY NOTES

on the common credit insurance policy for medium and long-term transactions with private buyers

(General conditions)

and on the endorsement for extension of the guarantee

TITLE I

COMMON POLICY

On Article 1

1. APPLICATION OF THE PERIOD OF SIX MONTHS PROVIDED FOR IN THE FIRST PARAGRAPH WHERE EVENT 'B' OF ARTICLE 3 OCCURS (INSOLVENCY OF THE DEBTOR)

It was considered necessary to make this period applicable even where event 'B' occurs, as there are numerous cases where it is possible, at least partially, to continue the performance of the contract although this may not be immediately apparent. Some time may elapse before the real situation of the debtor can be established and his other creditors or the administrator acting on their behalf can decide whether to continue or to terminate current contracts.

2. SCOPE OF THE PROVISIONS CONTAINED IN THE SECOND PARAGRAPH OF ARTICLE 1

This paragraph was drafted so as to cover two different situations:

- materialisation of a manufacturing risk subsequent to a decision by the credit insurer to continue manufacture;
- materialisation of a manufacturing risk subsequent to two successive decisions by the credit insurer, the first requiring cessation of manufacture, and the second its resumption.

In order in the second case not to penalise the insured and increase the loss unnecessarily it appeared advisable to allow the qualifying period for the claim to run from the date of the decision requiring cessation of manufacture: the last line of the second paragraph of Article 1 thus refers back to the decision mentioned in the first paragraph of that Article.

3. EXCHANGE LOSSES INCURRED ON PAYMENT MADE IN THE CURRENCY OF THE COUNTRY IN DISCHARGE OF OBLIGATIONS DURING THE PERIOD OF MANUFACTURE

The event referred to in Article 3 (F), unlike the other events listed in Article 3, is not automatically a case covered by the guarantee of manufacturing risk, but does fall within the rules relating to credit risk referred to in Article 4 (2) (b) (b). This solution was adopted so as to prevent the insured, after the debtor has made in his own currency a payment required of him, from evading his contractual obligations and claiming indemnity for a manufacturing loss on the ground that devaluation has taken place.

When devaluation of the currency in which the deposit was made by the debtor is accompanied by a delay in transfer such as to render an indemnity payable, the exchange loss suffered by the insured may be indemnified without regard to Article 4 as a transfer loss indemnifiable under Article 3 (E).

On Article 2

1. THE TERM 'NON-RECOVERY'

The term 'non-recovery', which appears in the third line should be interpreted in the light of Article 8, which requires the insured to conduct the transaction with all reasonable and usual care, skill and forethought—and thus to do his utmost to recover the debt—as well as of Article 12 (2).

2. PARAGRAPH 3

This provision is intended to avoid payment of an indemnity being delayed too long or not being made at

all, if several of the events constituting a cause of loss occur consecutively, but none of them continues up to expiry of the qualifying period for the claim.

For example, an event covered by the guarantee occurs and prevents the debtor from paying, but before the expiry of the qualifying period for a claim the situation changes and at that moment another event, also covered by the guarantee, occurs and prevents the transfer of funds paid over in the country of the debtor. Without provisions prohibiting accumulation the insured would not be indemnified until the qualifying period for a claim relating to the transfer risk had elapsed. Assuming that the first event constituting a cause of loss lasted for five months, the insured would not be able to claim until eleven months after the due date.

If, therefore, several events constituting a cause of loss occur consecutively, the insured must at the latest be indemnified upon expiry of a period equal to the qualifying period applicable to the earliest such event.

3. LAST PARAGRAPH

If the commercial risk is not covered, it is necessary to limit the validity of the guarantee in respect of political risks to a specific period, calculated from the due date, for without this limitation, in the absence of a deposit made in local currency by the debtor at the due date, the guarantee would be maintained for an unlimited period, contrary to the principles of insurance.

On Article 3

1. THE CONCEPT OF NON-PAYMENT

This concept should be interpreted as covering all the obligations of the debtor relating to payment, and in particular the completion of formalities for conversion and transfer in favour of the creditor of payments which the debtor has made in local currency.

2. INDEMNIFICATION WITHIN THE CONTEXT OF EVENTS 'A' AND 'B'

The occurrence of an event under paragraph B (insolvency) does not prevent the credit insurer from continuing to indemnify the insured under paragraph A (non-payment by the debtor).

The occurrence of an event under paragraph B does not necessarily mean that the insured will be indemnified immediately. The settlement of insolvency claims often takes a very long time. Even if the insurer and the insured have had prior warning of the bankruptcy of the debtor, of an arrangement of his with creditors or of his inability to meet his obligations, long delays are likely before the official documents establishing the true legal position of the debtor reach them. Furthermore, in the particular cases of bankruptcy and winding up (specified under paragraph B (1)), the insurer may, pursuant to his right under Article 12 (2), decide to delay paying the indemnity until the debt of the insured is admitted as a liability of the insolvent debtor.

If the occurrence of an event under paragraph B were to eliminate any possibility of action by the Company under paragraph A, the indemnification of losses suffered by the insured might be unduly delayed.

Consequently the solution adopted will make indemnification of the insured in respect of non-payment (paragraph A) possible during those delays even if the indemnity may subsequently have to be repaid where the debt proves to have no legal validity.

On Article 4

1. EFFECTIVE DATE OF THE GUARANTEE

A. Conditions precedent to the guarantee taking effect (last subparagraph of paragraph 1)

The effective date of the guarantee may be conditional upon the completion of certain formalities:

- the making of a payment on account,
- opening of a confirmed or unconfirmed documentary credit,
- delivery of a transfer guarantee or a payment guarantee.

The fact that the entry into effect of the guarantee is conditional upon the completion of these formalities will prevent a transaction being covered where the debtor is in breach from the outset through non-performance of his obligations.

In view of this and of the fact that the effective date of the guarantee should not be deferred for too long, it has been decided:

- that the completion of the aforementioned formalities, in so far as they must be fulfilled within sixty days following entry into force of the export contract, shall be the condition precedent to the guarantee taking effect.
- that the payments to be received within this period can in no case be guaranteed.

When the formalities referred to above are completed, the guarantee becomes retroactive to the date of the entry into force of the contract.

B. Effective date of the guarantee of the credit risk

(a) *Handing over of accepted bills or of promissory notes*

The handing over of accepted bills or of promissory notes cannot in itself give rise to a valid claim against the debtor within the meaning of the policy, and consequently is insufficient to bring the guarantee of the credit risk into operation.

(b) *Export contracts including performance of services*

The text of the policy does not mention the performance of particular services (for example, installation work) which may be included in some supply contracts. For these transactions, the guarantee of the credit risk takes effect on the date on which performance of these services gives rise to a right of payment.

C. Retention moneys

The insurer's guarantee extends to the total price of the shipments or services, without deduction of retention moneys. This will, however, be without prejudice to the application of Article 12 (2).

2. EXTENT OF THE GUARANTEE (MANUFACTURING RISK)**A. Premium**

As indemnification covers only the cost price of performance of the export contract or manufacture of the goods ordered, the premium paid by the insured will not be taken into consideration when calculating the loss coming within a manufacturing claim.

The same solution is not adopted in respect of the credit risk; for indemnification is effected on the basis of the selling price, and it would be very difficult to assess whether the latter includes the equivalent of the premium amount.

B. Costs incurred before signature of the export contract

The policy includes in the indemnifiable costs those incurred by the insured in the performance of his contractual obligations or in the manufacture of the supplies ordered from him. Costs incurred prior to signature of the export contract will not be taken into consideration in calculating the indemnity, except in regard to the overheads of the insured which are attributable to the guaranteed transaction in accordance with generally accepted financial and accounting rules for the determination of cost prices. Naturally these provisions will not prevent the cost of supplies purchased prior to signature of the contract being taken into account in the calculation of the loss, in so far as they have been used in performance of the contract. The same rules apply to commissions.

C. Sub-contracts

Sub-contractors must abide by the decisions of the credit insurers in respect of the manufacturing risk, the manner of application of the principle being left to the choice of the Companies.

Where the export contract provides for a substantial part of the manufacture to be sub-contracted, the special conditions shall include appropriate provisions to avoid any possible obligation to indemnify sub-contractors for their loss of profits.

The terms of indemnification must in no case be more favourable to sub-contractors than to the exporter.

3. EXTENT OF THE GUARANTEE OF THE CREDIT RISK — PARAGRAPH 2 (b) — INDEMNIFICATION OF MATURITIES DUE BEFORE THE EFFECTIVE DATE OF THE GUARANTEE OF THE CREDIT RISK

The occurrence of the event referred to in paragraph A of Article 3 (non-payment by the debtor) during the

manufacturing period does not in itself cause the manufacturing risk to materialise, since the guarantee of this risk does not cover non-payment by the debtor. However, such an occurrence may constitute a threat of loss. The credit insurer may decide:

— either to order suspension of manufacture under the provisions of the first paragraph of Article 1, in which case the maturities due before the effective date of the guarantee of the credit risk will be indemnified within the framework of the cover for the manufacturing risk and in accordance with the terms relating to that cover,

— or to order continuation of manufacture and to indemnify those maturities in accordance with the terms relating to the guarantee of the credit risk under Article 4 (2) (b).

4. ADDITIONAL COSTS**A. Definition**

These are costs resulting from a loss or threat of loss and incurred with the approval of the credit insurer in order to avoid or limit the damage.

B. Additional costs in case of manufacturing loss or threat of loss**(a) Financing costs**

The financing costs incurred by the insured by reason of a decision of the credit insurer to continue manufacture are indemnified as additional costs, even if the insured finances these for his own account.

(b) Damages and interest or penalties

The insured may be liable to pay damages and interest or penalties to the buyer when performance of the export contract has been suspended on the instructions of the credit insurer. Although not expressly referred to in the text of the policy, such damages and interest or penalties may still be indemnifiable as additional costs within the limits of the maximum indemnity payable.

C. Additional costs in the case of credit loss or threat of loss

These costs will be limited to costs of pursuing rights in court or otherwise. They must only be incurred with the approval of the Company.

D. Lawyers' fees

Lawyers' fees and other legal costs incurred without judicial proceedings and with the approval of the Company, will be indemnified as additional costs.

On Article 5**1. CREDIT INSURER'S RIGHT OF DECISION**

It shall be within the discretion of the credit insurer to decide whether there is a threat of the occurrence of any of the events referred to in Article 3 and to give

the insured such instructions as he considers appropriate. The credit insurer may exercise this right even if the manufacturing risk is not covered. This is to prevent exporters who have sought to save the amount of the 'manufacturing' premium and have insured only against the credit risk from enjoying greater freedom of action in carrying out their transactions and thereby gaining an advantage over those who have insured against both manufacturing and credit risks.

2. INDEMNIFICATION FOR LOSS RESULTING FROM DECISIONS OF THE CREDIT INSURER

Where the manufacturing risk is covered, the costs resulting from such a decision are, in the absence of manufacturing losses (i.e. where suspension of the contract lasts less than six months) indemnifiable as additional costs.

On Article 6

1. The guaranteed percentage, as well as the maximum amount of indemnification which the credit insurer can be required to pay, is stipulated in the special conditions of each policy.

The amount of this indemnification is equal:

- for the manufacturing risk, to the guaranteed amount of the contract increased by 10% and multiplied by the guaranteed percentage,
- for the credit risk, to the sum of all principal debts guaranteed, according to the state of completion, partial or total, of the contract:
 - plus interest payable up to the date of maturity of the principal,
 - plus an amount equal to 10% of the principal debts guaranteed under the contract,
 - multiplied by the guaranteed percentage.

The purpose of the above 10% figure is to allow for indemnification of additional costs.

2. It is stipulated that the insured shall retain exclusively for his own account responsibility for the portion not guaranteed by the credit insurer.

To pass on to sub-contractors the unguaranteed percentage corresponding to the sub-contracted portion of a contract does not conflict with this principle.

On Article 8

1. AUTHORITY FROM THE COMPANY FOR ANY MODIFICATION TO THE CONTRACT (paragraph 1)

All changes in the terms and conditions of the contract and of the securities attached to it are subject to authority from the credit insurer, which must be expressly given. The text of the policy makes it clear that such authority must be given prior to any amendment.

2. OBLIGATIONS OF THE INSURED IN CASE OF A THREAT OF LOSS (paragraph 3)

— Meaning of the phrase 'without being able to plead' financing difficulties

The purpose of this phrase is to render unacceptable any refusal of the insured in case of a threat of loss to continue performance of a contract on the grounds that financing of the transaction is difficult to arrange or to maintain;

— Manufactured goods

The provisions of paragraph 3 of this Article oblige the insured to obtain the Company's agreement before disposing of goods manufactured or in process of manufacture.

3. RESPONSIBILITY FOR COSTS RESULTING FROM THE APPLICATION OF THE PROVISIONS OF THIS ARTICLE (paragraph 5)

Without prejudice to the provisions of Article 4 (2) (c), these costs are to be borne by the insured. They include, in particular, costs relating to submission of the documents and information referred to in paragraph 4 of this Article.

This provision, however, will not be construed as enabling the credit insurer to cause the insured to bear the administrative costs of debt consolidation agreements.

On Article 10

1. METHOD OF CALCULATING AND COLLECTING THE PREMIUM (paragraph 1)

The amount of premium and conditions of payment thereof are indicated in the special conditions of the common policy.

2. PARTIAL REFUND OF PREMIUM (paragraph 2)

For reasons of equity, exceptions have been made to the principle of the indivisibility of the premium.

Should the amount or the duration of the risks be reduced, the premium is to be partly refunded, irrespective of whether the guarantee has taken effect. This provision is subject to the condition that no loss shall have occurred. Repayment of the premium for a transaction involving a loss would seriously prejudice the principle of insurance, since the premium is the consideration for the risk taken, which will, if it materialises, ultimately be borne by the credit insurer.

However if, following a manufacturing loss, the amount of the credit risk is reduced, the credit insurer must recalculate the premium, taking account of this reduction.

On Article 11

FAILURE TO PAY THE PREMIUM OR ANY OTHER SUM OWED TO THE CREDIT INSURER (paragraph 1)

Two penalties are envisaged:

- suspension of the guarantee,
- cancellation of the guarantee.

Suspension is automatic when the insured does not pay any sum he owes to the credit insurer; the latter may subsequently serve a formal notice on the insured. If this notice has no effect within fifteen days, suspension is converted into cancellation.

Losses arising during the period of suspension, as well as losses caused by events occurring during this period, may be indemnified provided that the premium is paid within fifteen days following the formal notice.

The premium need not necessarily be paid by the insured; it may be settled by a third party, for example a banker.

On Article 12

1. Paragraph 2

The rule set out in the second subparagraph of this paragraph applies generally. Thus if, after a dispute about his rights, the insured has obtained a favourable decision from the court having jurisdiction, the Company nevertheless retains the right to reject the declaration of loss until the insured has furnished proof that his debt has been admitted as a liability of the debtor.

2. Paragraph 6

As regards the scope of this paragraph, certain contracts may contain clauses providing for accelerated payment, the effect of which, in the event of the debtor defaulting, is to render some or all of the maturities payable immediately.

It could happen that the insolvency of the debtor prevents him from benefiting from the right to pay on credit terms and renders all his debts payable.

Neither the clauses providing for accelerated payment nor the loss of the right to pay on credit terms due to insolvency will affect indemnification, as the dates of payment of indemnity are determined only by the maturities provided for in the contract.

If as regards payment of the indemnity it is greatly to the advantage of the Company to disregard the schedule of maturities, particularly where it is clear that the debtor will not pay any part of his debt and the rate of interest to be indemnified is high, the Company is authorised to pay the indemnity immediately. If it indemnifies the insured in this manner, without taking account of the schedule of payments stipulated in the contract or agreed between the insured and the debtor, the interest which would have accrued for the period between the date of indemnification and the date fixed for payment thereof will be deducted from the amount of indemnification payable. This deduction is effected on the basis of the rate of interest laid down in the contract.

However, if that rate is lower than the actual cost of financing the contract, only the latter will be applied.

The credit insurers may, however, apply the rate in force on the expiry date of the qualifying period for the claim.

On Article 13

1. CONCEPTS OF 'ATTRIBUTION' AND 'APPROPRIATION'

— the term 'attribution', with reference to relations between the foreign debtor and the insured, has been used to describe the application by the debtor of a sum or payment to the settlement of a given transaction or maturity,

— the term 'appropriation', with reference to relations between the Company and the insured, has, however, been used only in relation to the application under Article 13 of a sum or payment from the debtor to the settlement of a given transaction or maturity.

This applies not only to payments made by the debtor, but also to those made by or on behalf of his guarantors.

2. UNGUARANTEED PORTION OF AN INSURED DEBT

In order to avoid any difficulty regarding the concept of debt or maturity this portion is treated as an uninsured debt.

On Article 14

1. PRINCIPLES FOR DETERMINING THE INDEMNIFIABLE LOSS

Definition of the phrase 'all amounts received by the insured'

The phrase 'all amounts received by the insured' (up to the date of payment of indemnity) should be interpreted in the broadest possible sense. Accordingly, account should also be taken of remission of debts, of discounts and services in kind in lieu of payments, as well as of the proceeds from returned deliveries or from any other form of transfer of goods to third parties.

2. THE PROBLEM OF COMPENSATION (paragraphs 1 (b) and 2 (b))

The credit insurer takes account of the amounts which the insured has received by way of compensation or which he would be entitled to receive prior to the statement of losses being drawn up. Compensation payable only after the statement of losses is drawn up is irrelevant here, since it does not concern payments received but rather payments which are in the future and consequently uncertain.

That is why the statement of losses takes into account only the compensation already received or which the insured would be entitled to receive prior to the statement of losses being drawn up.

Compensation received after payment of the indemnity will be treated as a recovery.

On Article 17

1. BASIC PRINCIPLE

The principle by which recoveries belong to the credit insurer up to the amount of the guaranteed percentage stated in the special conditions of the policy does not apply without qualification after a manufacturing claim.

The provisions of the fourth paragraph of Article 17 concerning manufacturing claims provide a solution which takes account of the interests both of insured and of insurer: they allow the insured to recover his profit if the entire loss is made good, and the insurer to recover part of the cost of financing the indemnification.

2. CRITERIA FOR SHARING

Recoveries are shared on the basis of the guaranteed percentage stipulated in the special conditions and not on the basis of the ratio between the amount of the loss and the amount of the indemnity paid.

The solution adopted takes account of Article 13 which provides for the attribution of payments received to unguaranteed debts. The sharing provided for in Article 17 only affects sums appropriated to the guaranteed debts.

3. MEANING OF THE PHRASE 'RECOVERY COSTS' APPEARING AT THE END OF THE FIRST PARAGRAPH OF THIS ARTICLE

These include sums paid to third parties (travel expenses, cost of obtaining goods in the course of manufacture from the factory) but not amounts corresponding to that part of the overheads of the insured which relate to recovery.

4. NUMERICAL EXAMPLE OF THE JOINT APPLICATION OF ARTICLES 13 AND 17

This example is set out in the Annex to these notes.

On Article 18

To draw up the statement of losses (credit risk) in the currency of the contract and not in the national currency of the credit insurer has the effect of averting inequitable consequences of an upward valuation of the currency of the contract where the debtor has at the new rate made a partial payment during the qualifying period for the claim.

For the conversion of the debit balance of the statement of losses, the principle is to adopt the rate in force at a date subsequent to the maturity; it is important to avoid applying a conversion rate which might encourage the insured not to take action in spite of loss when, following maturity, the currency of the contract is devalued.

TITLE II

ENDORSEMENT FOR EXTENSION OF THE GUARANTEE

A. Relationship between risks — principles

Performance bonds may be guaranteed only in so far as the contract itself is the subject of a credit risk guarantee.

However, performance bonds may also be guaranteed when the contract itself is covered only for the manufacturing risk because there is no credit risk.

The guarantee of bonds during the manufacturing period is conditional on the contract being covered for the manufacturing risk. When the credit risk only is covered, the following term will be included in the special conditions of the endorsement: 'The guarantee shall not take effect until the credit risk commences'.

If the contract is covered for the manufacturing risk and that risk materialises, the loss suffered by the insured is indemnified within the terms and according to the rules of the 'manufacturing' guarantee contained in the common policy. The main purpose of the provisions of the endorsement is to extend the scope of this guarantee to performance bonds.

In all other cases, when the manufacturing risk is not covered or when there is no manufacturing loss, the insured is indemnified on the basis of the special provisions contained in the endorsement. These provide that losses consequent upon the calling of the performance bond are covered when that calling is a direct result of a measure or decision of a political nature and of general application taken by the government of a foreign country, or when the insured is unable to obtain from the beneficiary of the bond compliance with an award of a competent court or arbitrator ordering him to return the sums which he has withheld.

B. General conditions

On Article 4

A distinction must be made between two situations:

— should the manufacturing risk materialise the losses consequent upon the calling of the bond are to be indemnified according to the rules relating to the

guarantee of the manufacturing risk. No special statement of losses is provided. The maximum indemnity, determined in accordance with the provisions of this Article, is based on the maximum amount of the bond and on the rate of conversion on the date of entry into force of the bond;

- if no manufacturing loss occurs, the provisions of Article 4 (2) of the endorsement apply: the statement of losses to be produced by the insured will include on the debit side the amounts paid to the beneficiary of the bond and, on the credit side, the amounts of restitution obtained by the insured.

Any additional costs incurred with the agreement of the Company in order to avoid or limit the damage will be indemnified according to the terms of Article 4 (2) (c) of the common policy.

Recoveries

The rules for sharing contained in Article 17 of the common policy also apply to recoveries effected in respect of the performance bond.

C. Special conditions

On Article 3

Maximum indemnity

The maximum indemnity is equal to the guaranteed percentage of the guaranteed amount of the bond, after conversion into (national currency of the credit insurer) either at the rate of exchange on the date the bond was given or at the rate of exchange on the date on which the insured is informed of the decision to grant the guarantee.

ANNEX C/1

NUMERICAL EXAMPLE OF THE JOINT APPLICATION OF ARTICLES 13 AND 17

The insured has, in respect of the foreign buyer, a guaranteed debt of 1000 (guaranteed percentage: 90%) and an unguaranteed debt of 400, both of which are unpaid at maturity on 1 January 1966.

On 1 January 1967, the debtor pays interest on arrears at the rate of 7% per annum, that is 98, attributing it as follows:

70 to the guaranteed debt $\frac{(10 \times 98)}{14}$,

28 to the unguaranteed debt $\frac{(4 \times 98)}{14}$,

On 1 January 1968, the debtor pays 1400 without attributing it.

On 1 January 1969, the debtor pays 98, without attributing it.

1. Allocation of the amount of 98 received on 1 January 1967

- A. By virtue of Article 13 (1) (a) the amount of 70 attributed by the debtor to the guaranteed debt remains appropriated to this debt.
- B. As regards the amount of 28 attributed by the debtor to the unguaranteed debt, Article 13 (1) (c) applies, i.e. the amount is shared pro rata between the guaranteed debt and the unguaranteed debt.

Thus an amount of 20 is appropriated to the guaranteed debt $\frac{(10 \times 28)}{14}$ and an amount of 8 to the unguaranteed debt $\frac{(4 \times 28)}{14}$.

As a result, under the credit insurance policy, the amounts of unpaid principal are amended to:

- 910, for the guaranteed debt (1000—(70 + 20)),
- and 392, for the unguaranteed debt (400—8).

- C. Of this amount of 98, the insurer and the insured will therefore each receive the following amounts:

- the insurer 90% (guaranteed percentage) of the amounts appropriated to the guaranteed debt i.e. 90% of (70 + 20) making 81,
- and the insured 8 (amount appropriated to the unguaranteed debt by virtue of Article 13 (1) (c)) plus 10% (unguaranteed percentage) of the amounts appropriated to the guaranteed debt, i.e. 10% of (70 + 20) making a total of 17.

2. Allocation of the amount of 1400 received on 1 January 1968

- A. As this amount of 1400 exceeds the principal amounts, both guaranteed and unguaranteed, remaining unpaid (910 + 392 = 1302), it is not necessary to make a new proportional sharing and the amount to be discharged may be directly deducted from it.

The appropriation is:

- 910 to the guaranteed debt,
- and 392 to the unguaranteed debt.

- B. The balance of 98 (1400 — 1302) must therefore be redistributed. The amounts of principal having been thus discharged, Article 13 (2) is applied. Thus:

$$\frac{(1000 \times 12 \text{ months}) + (910 \times 12 \text{ months})^1}{(400 \times 12 \text{ months}) + (392 \times 12 \text{ months})^2} \text{ which simplifies to } \frac{1910}{792}.$$

Under Article 13 (2), appropriation is made as follows:

- to the guaranteed debt, $\frac{1910}{2702}$ of 98, i.e. 69.3,
- and to the unguaranteed debt, $\frac{792}{2702}$ of 98, i.e. 28.7.

- C. The amount of 69.3 thus appropriated to the guaranteed debt should then be shared between the insurer and the insured on the basis of Article 17. The amount of principal being discharged, the provisions of the third paragraph of this Article apply, giving the insured that part of amounts appropriated for payment of interest on arrears which relates to the period before the date of payment of the indemnity (for this calculation, it is assumed that the indemnity was paid six months after maturity).

This amount of 69.3 represents the appropriation, to the guaranteed debt, of part of the interest on arrears paid by the debtor (98) for a period of twelve months, and payment is therefore made as follows:

- to the insured:

$$\frac{69.3}{2} = 34.65$$

$$\text{plus } 10\% \text{ (unguaranteed percentage) of } \frac{69.3}{2} = 3.465;$$

- to the insurer:

$$\frac{69.3 \times 90\%}{2} \text{ (guaranteed percentage) } = 31.185.$$

- D. Of the amount of 1400 paid on 1 January 1968, the insurer and the insured will respectively receive:

- the insurer:

819 (i.e. 90% of 910 appropriated to discharge of the principal of the guaranteed debt) plus 31.185 (90% of the part of interest on arrears appropriated to the guaranteed debt which relates to the period after payment of the indemnity) i.e. 850.185;

- the insured:

392 (amount appropriated to the unguaranteed debt) plus 91 (10%—unguaranteed percentage—of the 910 appropriated to discharge of the principal of the guaranteed debt) plus 28.7 (part of interest on arrears appropriated to the unguaranteed debt) plus 34.65 (part of the interest on arrears appropriated to the guaranteed debt which relates to the period before payment of the indemnity) plus 3.465 (10%—unguaranteed percentage—of that part of the interest on arrears appropriated to the guaranteed debt which relates to the period after payment of the indemnity), i.e. 549.815.

3. Allocation of the amount of 98 received on 1 January 1969

- A. Article 13 (2) applies:

$$\frac{(910 \times 12 \text{ months})^3}{(392 \times 12 \text{ months})^4} \text{ or, simplified } \frac{910}{392}.$$

¹ The sums of the products of the amounts of principal of the *guaranteed* debt, in respect of which payment was overdue, multiplied by the length of the delay in payment.

² The sums of the products of the amounts of principal of the *unguaranteed* debt, in respect of which payment was overdue, multiplied by the length of the delay in payment.

³ Product of the amount of principal of the *guaranteed* debt, in respect of which payment was overdue, multiplied by the length of delay in payment.

⁴ Product of the amount of principal of the *unguaranteed* debt, in respect of which payment was overdue, multiplied by the length of delay in payment.

Appropriation is made as follows:

- to the guaranteed debt, $\frac{910}{1302}$ of 98, i.e. 68.5
- and to the unguaranteed debt, $\frac{392}{1302}$ of 98, i.e. 29.5.

B. The amount of 68.5 appropriated to the guaranteed debt is shared between the insurer and the insured on the basis of Article 17. The insured having already received the whole of the interest due to him under paragraph 3 of this Article for the period before payment of the indemnity, the shares are simply in the ratio of the guaranteed to the unguaranteed percentages.

The insurer therefore receives 90% of 68.5, i.e. 61.65 and the insured 10% of 68.5, i.e. 6.85.

C. Of the amount of 98 paid by the debtor on 1 January 1969, the insurer and the insured will receive respectively:

- *the insurer:*
61.65 (90% of the amount appropriated to the guaranteed debt),
- *the insured:*
29.5 (amount appropriated to the unguaranteed debt) plus 6.85 (i.e. 10% of the amount appropriated to the guaranteed debt), i.e. 36.35.

4. Overall summary of allocations

The debtor has paid: $98 + 1400 + 98 = 1596$

The insurer has received: $81 + 850.185 + 61.65 = 992.835$

The insured has received: $17 + 549.815 + 36.35 = 603.165$ plus an indemnity from the insurer of 900 (90% of 1000).

ANNEX D

INTRODUCTION OF THE COMMON POLICY

1. Subject to the provisions of paragraphs 2 and 3 below, the common credit insurance policy for medium- and long-term transactions with *public* buyers shall be put into force on the expiry of one year from 1 September 1970. During this period, Member States will take all the measures necessary to adjust their national administrative practices for this purpose.

2. If, three months before the expiry of the period of one year specified in paragraph 1 above, it is found by the Council:

A. that it has not been possible to adopt Community acts relating to the common system of premium¹ applicable to medium- and long-term transactions both with public and with private buyers or the common policy for medium- and long-term transactions with private buyers, the putting into force of the common policy for medium- and long-term transactions with public buyers shall be suspended for a maximum period of twelve months from the date on which the Council establishes those findings.

During this period of twelve months, the Council will, on a proposal from the Commission, adopt measures concerning the common system of premium and the policy relating to private buyers, so that:

- (a) on expiry of this period, at the latest, such measures may enter into force, the suspension of the putting into force of the common policy relating to public buyers ceasing to be effective on the same date;
- (b) a period of six months shall in any event be allowed between the date of adoption of these two measures and their simultaneous entry into force.

However, if the Council is unable to adopt such measures within the period of twelve months, this shall be extended by six months.

B. that the common system of premium applicable to medium- and long-term transactions both with public and with private buyers and the common policy for medium- and long-term transactions with private buyers have been adopted, but that one or more community measures concerning the fields listed below have also been adopted and that others are likely to be adopted within a maximum period of six months, the entry into force of the three measures mentioned in A shall also be suspended for the same period from the date on which the Council establishes those findings:

- harmonisation of the factors considered to be essential in the field of competition as regards guarantees for short-term risks;
- harmonisation of the exchange guarantee and the prices guarantee;
- a common policy for financial credits and the premium system relating thereto.²

C. that the conditions referred to under B have not been fulfilled, the Council will, on a proposal from the Commission, adopt the texts referred to in B within a maximum period of one year from the putting into force of the measures referred to in A.

Those texts shall enter into force at the latest six months after their adoption.

3. In any event, if the measures provided for in paragraph 2 (A) have been adopted more than six months after the adoption by the Council of the common medium- and long-term policy for public buyers, the putting into force of all the texts referred to in paragraphs 1 and 2 (A) shall take place six months after the adoption by the Council of the last of these measures.

¹ By common system of premium is meant the rates, the method of calculation and the classification of importing countries.

² These three items are not listed in order of priority.