

Ministerial Regulation

Prescribing rules, procedures and conditions on insurance against political risks, 2004¹

By virtue of the provisions under Section 4 of the Export-Import Bank of Thailand Act, 1993, and Section 8 (7) of the Export-Import Bank of Thailand Act, 1993, as amended by the Export-Import Bank of Thailand Act, (No. 2), 1999, Minister of Finance hereby issues a ministerial regulation as follows:

Article 1: In this ministerial regulation,

“Investor” means an entrepreneur abroad having investor or joint investor as follows:

(1) Being a Thai national;

(2) Being a corporate registered in Thailand and having capital exceeding half of such corporate held by the person under (1) or the corporate having the person under (1) investing exceeding half the value of total capital in such corporate and being the authorized person under the law, regulations or agreements in appointing the majority of directors of the total number of directors or in the majority voting to prescribe the operation policy of such corporate.


“Currency of Free Use” means the essential currency prescribed by the board of directors.

“Policy” means the policy insuring against political risks as issued to the investor by the Bank.

“Political Risks” means the risks arising from the cases as follows:

¹ Government Gazette, 2004/Book 79a/Volume 18/December 30, 2004

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(1) In case of the government of the country in which the investor made investment taking the measure of limiting the outbound fund transfer or not permitting the exchange of its own currency into the currency of free use or other currency acceptable to the investor, in this respect, including the case of the government of the country in which the investor made investment not permitting or being unable to make the fund transfer as requested by the investor by the period prescribed by the board of directors or in case of the government of the country in which the investor made investment taking the measure to hinder the investor not to exchange the currency by using the exchange rate in general use in the country in which the investor made investment but excluding the devaluation of money, the use of multiple exchange rates or the depreciation of monetary value;

(2) Any legal or administrative action or omission of such action by the government of the country in which the investor made investment resulting in the investor losing the right of ownership, the control or obtainment of benefits in the amount causing the investor to be damaged from the investment, e.g., the seizure or attachment or confiscation of the investor's property, except for being the measure for social order peacekeeping, measure for taxation, measure related to environment or labor or any other measure used in general to regulate economic activities in the country in which the investor made investment;

(3) In case of the government of the country in which the investor made investment denying the obligation burden under the contract or breach of contract with the investor such that:

(a) The investor is unable to carry out the judicial or arbitration procedure to consider the adjudication or arbitration of the claim owing to unacceptance of contract or breach of contract by the government of the country in which the investor made investment;

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(b) The court makes no judgment or the arbitrator grants no award within reasonable period prescribed by the board of directors;

(c) The court judgment or the arbitration award is unenforceable.

(4) Any military action or insurrection in the territory of the country in which the investor made investment, e.g., revolution, coup d'état, rebellion, riot or any other similar political event and being beyond the control of the government of the country in which the investor made investment such that the investor is unable to normally carry out the business or the project within the period prescribed by the board of directors. In this respect, the said event must occur owing mainly to the political objectives.

Article 2: The Bank shall insure against political risks for the investor specifically for the enterprise being granted credit support by the Bank.

The insurance against political risks for any one of the investor of the Bank in paragraph one shall have the maximum facility not exceeding the amount prescribed by the board of directors.

Article 3: For the insurance against political risks, the Bank shall not be liable to indemnity to the investor in the cases as follows:

(1) Any action or omission of such action of the government of the country in which the investor made investment, whereas the investor has agreed to such action;

(2) Any action or omission of such action being taken part by the investor causing damages or breach of law, regulation or rule of the country in which the investor made investment;

(3) Any other case prescribed by the board of directors.

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Article 4: The indemnity under the policy to the investor shall be in accordance with the rules prescribed by the board of directors.

The provisions in the policy must at least specify the cases as follows:

(1) Duty of the investor in carrying out actions to immediately obtain compensation against damages as appropriate for the case in accordance with the law of the country in which the investor made investment or within reasonable period from the date of damage occurrence or the date on which the investor learned of such damages;

(2) Stipulation for the Bank to subrogate or take assignment of any claims which the investor had against the country in which the investor made investment and other relevant persons upon the Bank having made compensation or agreed to make compensation of indemnity to the investor as may be the case.

Article 5: The Bank may reinsure the political risks as insured by the Bank for the investor with other insurance company or corporate accepting insurance against political risks, in whole or part thereof, in this respect in accordance with the rules prescribed by the board of directors.

Article 6: The board of directors shall prescribe the insurance premium rate, fees and other expenses collected from the insured investor and the said rate shall be appropriately reviewed in accordance with the political risks as expedient.

Given this 24th day of November 2004

Somkid Jatu-sripitak

Minister of Finance

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Remark: The rationale for the promulgation of this ministerial regulation was due to Section 8 (7) of the Export-Import Bank of Thailand Act, 1993, as amended by the Export-Import Bank of Thailand Act, (No. 2), 1999, prescribing the Export-Import Bank of Thailand to insure against political risks in overseas investment of the investor in accordance with the rules, procedures and conditions prescribed in the ministerial regulation. It is thus necessary to issue this ministerial regulation.

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