

## **INV Operational Guidelines**

*Adopted at the Investment Insurance Committee meeting in Banff, Canada, 13-14 October 2008*

### **Introduction**

The Members of the Berne Union Investment Insurance Committee (referred to below as "Members") are quite diverse organisations, spanning from multilateral institutions and public agencies or private companies operating on behalf of their state to wholly private insurers. They are major providers of political risk insurance in support of foreign investments. The members insure cross-border investments and related transactions against political violence, transfer restrictions or inconvertibility, expropriation and similar actions, and breach of contract by foreign authorities. Some of them, in particular private members, also provide insurance against foreign governments' non-honouring of loan repayments or other obligations they have entered into.

In an increasingly integrated market, private and public Members are progressively interacting in rendering support, fostering cooperation and working in partnership. In doing this, Members apply the most advanced techniques and practices.

Members' programmes further the expansion of foreign investments and international trade with positive implications for world growth and prosperity. When adequately structured and implemented, these programmes can be instrumental in controlling and mitigating negative social or environmental impacts and avoiding the risk of illicit business practices. It is a goal of the Berne Union, stated in its Statutes, to "work for the maintenance of sound principles of foreign investment insurance and the encouragement of a favourable investment climate, by co-operating in efforts to provide investment insurance for the benefit of investors and host countries".

Members strive to be cooperative, informative and transparent. Their business involves a wide variety of interested parties and stakeholders: Members' owners or governments who bear the ultimate ownership of the insurance programmes; project sponsors; host countries and companies, for whom insured flows of capital are important and often unique sources of funding; society at large – in both member and recipient countries - who are keen to see the benefits of investments and growth as broadly distributed as possible; and players in related industries that interact with Members through their day to day business.

It is an important objective of the Berne Union, as noted in its Statutes, to "provide for the exchange of information, assistance, expertise and advice in relation both to the commercial and political risks involved in export credit insurance, to the political risks involved in foreign investment insurance and to the range of associated matters relating thereto".

As expressed by their Value Statement, Berne Union Members "are committed to operate in a professional manner that is financially responsible, respectful of the environment and which demonstrates high ethical values - all in the best interest of the long-term success of our industry".

In the framework set by its Statutes and Value Statement, the Berne Union has identified ten Guiding Principles for the activities of its membership in three areas of business: Short term export credit insurance (ST), medium/long term export credit insurance/lending (MLT), and investment insurance (INV). The ten Guiding Principles have been further developed into operational guidelines for the INV field, as set out in this paper. The operational guidelines are not legally binding obligations; they reflect and illustrate the behaviours and practices followed by Members pursuant to the Guiding Principles. While the Guiding Principles represent an enduring commitment, the operational guidelines will continue to be monitored, revised, improved and communicated.

## **Guiding Principle 1**

*We conduct our business in a manner that contributes to the stability and expansion of global trade and investment on a sound basis, that is in accordance with applicable laws and relevant international agreements.*

### **INV operational guidelines**

- Members are respectful of national and international laws and agreements that affect specific elements of their programmes.
- Members with a government mandate act within the specific mandate/authorisation received from their respective governments and under the auspices of their guardian authorities.

## **Guiding Principle 2**

*We carefully review and manage the risks we undertake.*

### **INV operational guidelines**

- Members review and manage risks starting with careful underwriting, using the best available information on host countries and obligors, and appropriate risk assessment techniques.
- Members actively monitor and manage risks in their portfolio through increasingly sophisticated monitoring systems and, at times, by means of reinsurance and/or other market protection tools. They may also maintain special reserves to cover potential losses and contingent liabilities.

### **Framework**

Assessment, underwriting and management of risks constitute the core business of Members, who are continuously refining their risk assessment and risk management techniques in all relevant segments: country and political risk, market risk, operational risk, reputational risk, legal and documentary risk.

Apart from traditional political risks, new forms of risks associated with inadequate or failed business processes such as human error, fraud, or inadequate governance, as well as environmental or social impact, corruption, and money laundering, are also being closely scrutinised. These represent reputational risks for Members and can have dire social and economic consequences for the projects and the people affected.

Once underwritten, Members monitor and measure portfolio risks; they also manage the risks actively.

## **Guiding Principle 3**

*We promote export credit and investment insurance terms that reflect sound business practices.*

### **INV operational guidelines**

- Members apply terms and conditions that reflect best market practices and are conducive to sound underwriting.
- Members support terms consistent with the economics of the underlying transaction; recognise generally accepted practices; and introduce and use covenants to ensure the enforcement of their rights and conditions.

## **Guiding Principle 4**

*We aim to generate adequate revenues to sustain long-term operations reflective of the risks we undertake.*

## **Guiding Principle 5**

*We manage claims and recoveries in a professional manner, while at all times recognising the insureds' and obligors' rights.*

### **INV operational guidelines**

- Members maintain open relations with their policyholders on claim and recovery matters and meet all justified obligations in a prompt and satisfactory manner.
- Members, subject to any confidentiality restrictions, share information with each other on exposure, payment delays, defaults, and recovery plans.
- Members cooperate in sharing information, experiences and best practices in claims handling and recoveries.

### **Framework**

The Berne Union has over the years developed close cooperation on sharing information regarding delayed payments, defaults, claims paid and recoveries, and has established an early warning system. Members, on occasions, benefited from their Berne Union membership which better protected them and their clients from potential default.

Claim and recovery matters are not specifically regulated by international laws or agreements. Claim payments follow the application of rules defined by individual Members. These rules are set in accordance with the conditions of the guarantee/insurance policies of each respective Member and are aimed at, amongst other objectives, to ensure timely and adequate indemnification of the insured parties. In their recovery activities, Members act often on behalf of policyholders, in circumstances where the latter have retained an uncovered portion of the risk, thus providing an additional benefit to such policyholders. Members strive to communicate openly with policyholders in order to secure fair, quick and diligent processing of any claim presented.

Subject to any confidentiality restrictions, Members share experience, and promote cooperation and new approaches in handling recoveries with a view to being both expeditious and cost effective in their actions, while aiming to secure the best result possible. In recovery situations Members are aware of the different permutations that might arise in a default scenario such as the presence and ranking of various creditors; or international efforts to tackle debt issues, and endeavour to act in a manner that is both protective of their own rights but at the same time acknowledges the need to coordinate with other parties.

## **Guiding Principle 6**

*We are sensitive about environmental issues and take such issues into account in the conduct of our business.*

### **INV operational guidelines**

- Members encourage preventing and/or mitigating adverse environmental or social impacts from their insured transactions through assessment of social and environmental issues and follow up through an appropriate monitoring process.
- Members promote knowledge transfer, learning and best practice through cooperation and learning on broader environmental policy application and specific methodologies.
- Members foster transparency, consistency and responsibility in decision-making, by encouraging disclosure of relevant environmental information (subject to any confidentiality restrictions that may apply).

### **Framework**

International agreements set the best practices for the management of environmental issues in export credit business and may provide guidance in the field of foreign investment. These include the Equator Principles adopted by a number of financial institutions in the private and public sectors, and the OECD recommendation “Common Approaches on Environment and Officially Supported Export Credits”.

## **Guiding Principle 7**

*We support international efforts to combat corruption and money laundering.*

### **INV operational guidelines**

- Members conduct their business in an ethical manner and in a way that is intended to deter and discourage unlawful behaviour. They require clients seeking their support to comply with all applicable international and/or national regulations that might be instrumental in reducing or eliminating corrupt practices or money laundering.
- Members contribute to international efforts to combat bribery of foreign public officials in transactions which they insure.

### **Framework**

The main international agreements regulating corruption matters are the UN Convention against Corruption, the OECD Convention on Combating Bribery, and the OECD Recommendation on Bribery that has come into effect at the beginning of 2007, and whose major aim is to raise awareness in combating bribery in international business transactions. In each country, dedicated institutions in accordance with national legislation are active in implementing/pursuing anti-money laundering policies. Specific modalities and efforts depend on national laws and regulations and are applied in different ways depending on the nature of the various Members (e.g. banks or companies).

## Guiding Principle 8

*We promote best practices through exchange of information on our activities, policies and procedures, and through the development of relevant agreements and standards, where these are deemed necessary to govern the provision of export credit and investment insurance.*

### **INV operational guidelines**

- Members promote the development and implementation of best practices in the field of investment insurance in several ways which support and reinforce each other as set out under each respective Guiding Principle.
- Modalities for promoting best practices include:
  - (i) holding meetings for Members to explore and exchange information, experiences and views on the full range of professional issues in the business field and establishing an Intranet for the same purposes;
  - (ii) developing agreements and standards such as the Value Statement, the Guiding Principles and the specific INV Guiding Principles and reviewing their application and validity over time.
  - (iii) if asked, giving technical input and advice to national regulatory authorities or guardian authorities.

### **Framework**

The practice of the exchange of information has been built up over many years. In the last few years, the Intranet has been established as a main tool for these exchanges. In addition, meetings – general or specialised – provide important forums for face-to-face exchanges between Berne Union Members.

Similarly, the history of developing agreements and standards goes back many years. The General Understanding was first established in the 1970s and subsequently amended and expanded several times. The overarching Value Statement was crafted and adopted in 2004, followed in 2006 by the more concrete Guiding Principles in which 10 main Principles are defined. These three documents apply to all Berne Union Members, whether public or private, whether engaged in short or medium/long term export credit insurance or lending or in investment insurance. In addition, when adopting the Guiding Principles for the Berne Union as a whole, it was also agreed to develop specific operational guidelines within each of the business areas – short term export credit insurance (ST), medium/long term export credit insurance/lending (MLT), and investment insurance (INV) – thus replacing the somewhat outdated General Understanding.

## Guiding Principle 9

*We are committed to furthering transparency amongst members and in the reporting of our overall business activities, reflective of international practices and respectful of the confidentiality of third party information.*

### INV operational guidelines

- Members, subject to any confidentiality restrictions, provide information as agreed between them, taking all reasonable steps to ensure that all information given is truthful and complete and supplied in a timely manner.
- Members respect the confidentiality of information and, subject to their obligations at law, should not divulge it outside the Berne Union without specific prior approval from the Member(s) who provided the information. As a matter of principle, only Members who provide information may have access to corresponding information from other Members.
- All information exchanged is used by Members strictly in the pursuit of their activities.
- Members undertake, individually as well as collectively through the Berne Union, to provide information externally to the extent reasonably possible taking into account obligations of confidentiality. As a basic principle, the Berne Union and individual Members may only publicise information on an aggregated level, i.e. not detailing data for individual Members.
- Members comply with relevant antitrust and competition laws. Information exchange within the Berne Union shall not be used in any way inconsistent with full and fair competition.

### Framework

The open and active exchange of information lies at the very heart of the Berne Union. It is one of the main purposes of the Union, as set out in the Statutes, Article 2.01: "The purposes of the Union shall be ... (iii) to provide for the exchange of information, assistance, expertise and advice in relation both to the commercial and political risks involved in export credit insurance, to the political risks involved in foreign investment insurance and to the range of associated matters relating thereto." Members' obligations are noted in Article 3.01: "With a view to achieving the aims set out in Article 2 the Members will ... (i) exchange information and furnish the Union with the information necessary for the accomplishment of its tasks" and Article 3.02: "The Members agree on their honour not to conceal any material fact nor to communicate any information likely to mislead other Members." Further, the requirement of confidentiality is spelled out in Article 3.03: "The Members also agree to respect and maintain the confidentiality of information received from the Secretary-General and Secretariat, from other Members and during Meetings and, in particular, not to disclose this in any unauthorised way to third parties, subject to any Code of Conduct or Disclosure as may be in force." and Article 3.04: "The General Meeting shall decide the action to be taken against any Member who breaches the terms of Article 3.03, taking account of the nature of the breach and how often it has happened."

The exchange of information in the Berne Union serves several purposes: (i) developing best practices for the investment insurance industry; (ii) monitoring the application and validity over time of best practices, standards, agreements and/or rules; (iii) informing of Members' overall business trends and new developments; (iv) broadening Members' sphere of experience, identifying Members who have special knowledge about specific markets or obligors; (v) providing early warning on problem cases; and (vi) pooling information for external usage. While in the past information exchanges mainly aimed at serving Members themselves, more emphasis has been given in recent years on raising the profile of the Berne Union vis-à-vis the outside community.

Information exchanged within the Berne Union consists of (i) business data reporting; (ii) contributions to Berne Union meetings; and (iii) member scheme and contact details. It is considered essential that Members make full use of these opportunities. In particular, every Member's full cooperation is needed to ensure that all information available on the Intranet is correct and updated, thus providing Members with information which is of high quality and adds real value to Members' work.

## **Guiding Principle 10**

*We encourage cooperation and partnerships with commercial, bilateral, multilateral, and other organisations involved in export trade and investment business.*

### **INV operational guidelines**

- Members work towards maintaining constructive relations with stakeholders and seek to enter into discussion or cooperation with other parties among the various stakeholder groups.
- Members look towards other insurers or reinsurers, IFIs and other private and public organisations as partners in their activities and strive to develop – individually and collectively, for specific transactions or more broadly – a framework for enhanced cooperation.
- Members recognise that the need for partnerships becomes even more crucial at times when the global economy is facing difficulties and coordinated efforts are more valuable.

### **Framework**

The Berne Union and its Members work towards maintaining constructive relations with stakeholders. They acknowledge the fact that in many areas Members' programmes are unrivalled and need to be made better known to the public. In this respect they also work actively to be more visible and open vis-à-vis stakeholders and the general public. In light of this, the availability and quality of statistics and other information on Berne Union Members' activities is of great importance.