

# SHIPBUILDING GUARANTEE FUND

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OPERATIONAL PROCEDURES

## **I. NATURE AND LEGAL FRAMEWORK**

The Shipbuilding Guarantee Fund (SGF) is a guarantee fund aimed at achieving the objectives included in the business purpose of PYMAR, and shall be set up within a subsidiary company, PYMAVAL GARANTÍAS, S.A., a single-shareholder company wholly owned by PYMAR (hereinafter referred to as “**PYMAVAL**”). The sole aim and purpose of PYMAVAL shall be to hold, manage and represent the SGF and the rights and obligations arising thereof. In the exercise of its activity, PYMAVAL shall at all times be funded by the SGF and its liability shall in any event be limited to the assets of the Fund, which shall be the same as those of PYMAVAL. PYMAR shall under no circumstances accept any liability for obligations undertaken by PYMAVAL.

The SGF shall be represented by PYMAVAL and managed and administered by PYMAR, in its capacity as the fund management company and according to the terms regulated in the Fund Management Contract and in accordance with these Operational Procedures. PYMAR shall also hold the status of sole director of PYMAVAL.

The SGF is guided by the principles of solidarity, self-financing and long-term sustainability, and one of the objectives of these Operational Procedures is to guarantee its viability and profitability.

The financial effects of each claim shall be borne by PYMAVAL, in its status as owner of the SGF, and indirectly and jointly by all the Affiliated Entities of the Fund, in proportion to the contributions made. The contributions made by each Member shall determine their maximum theoretical capacity for requesting guarantees according to the terms and within the limits stipulated in these Operational Procedures.

## II. PURPOSE

The purpose of the SGF shall be to accept liability for any bonds, sureties or guarantees which may be granted by PYMAVAL, charged to and up to the asset limit of the SGF, in the form and in accordance with the requirements established herein, in favour of its Members and the ship-owners that enter into contracts with them, in any of the following transactions, always within the limits of a pre-established amount and for a certain term, which shall be specified for each transaction, and subject to the provisions of Procedure VII, section 1:

**1. Repayment guarantees.** Guarantee over shipyards that are Members of the SGF to ship-owners or credit or financial institutions which covers the obligation to repay the amounts received, in the event of default by the shipyard, according to the terms and conditions of the contract for the construction of ships or floating craft, provided that the ship-owner has been granted an irrevocable right to repayment and that the amounts received have not already been repaid.

**2. Completion guarantees.** Guarantee over shipyards that are Members of the SGF to ship-owners which covers the obligation to pay cost overruns in relation to the completion of ships and floating craft in the event of default by the shipyard, according to the terms and conditions of the construction contract, either in the shipyard carrying out the construction or, if applicable, another shipyard that is a Member of the SGF.

**3. Financing guarantees.** Guarantee to credit or financial institutions in favour of shipyards that are Members of the SGF which covers the financing of each operation for the construction, repair, modernisation or conversion of ships or floating craft, according to the content of the construction contract. Under no circumstances shall guarantees for corporate financing be included in this item.

**4. Financing guarantees for ship-owners.** Guarantee to credit or financial institutions which covers the financing of ship-owners, including contracts for the construction, repair, modernisation or conversion of ships or floating craft that they enter into with shipyards that are Members of the SGF, as well as the acquisition of ships and floating craft built by them.

**5. Technical guarantees.** Guarantee over shipyards that are Members of the SGF to ship-owners which covers the quality guarantees required by ship-owners in accordance with the terms of the contract for the construction of ships or floating craft.

### III. PARTIES

By virtue of their involvement in the SGF, mention should be made of the following parties:

**1.- PYMAVAL:** The company which owns the SGF and whose sole business purpose is to hold, manage and represent the Fund in order to achieve its objectives.

**2.- PYMAR:** Notwithstanding the possibility of it making contributions to the SGF according to the terms and conditions detailed below, it shall have the status of a **Fund Management Company**.

**3.-Affiliated Entities:** The shipyards and the companies or entities that make contributions to the SGF shall have the status of Affiliated Entities. Affiliated Entities do not have the status of holders, owners or co-owners of the SGF, which is solely owned by PYMAVAL, and shall be granted the rights and obligations of a purely contractual nature arising from these procedures and, if applicable, their respective Affiliation and Contribution Agreements, according to the definition of such Agreements set out below.

The Affiliated Entities may be Sponsors or Members, according to the terms and in accordance, respectively, with the framework which is regulated below. The status of Affiliated Entity (as a Sponsor or Member) and the rights and obligations inherent therein are of a personal nature and may not be transferred to third parties, except in cases of the transfer of undertakings or universal succession.

**4.- Sponsors:** Any organisations, institutions or entities other than shipyards that make contributions of any kind to the SGF and consequently acquire the status of an Affiliated Entity, shall have the status of Sponsors. In any event, any entities that have granted a mandate to PYMAR for its establishment and, in addition, any others who make the respective contribution at a later date, in accordance with the terms and conditions set out in these Operational Procedures, shall be deemed to be Sponsors of the SGF.

Any organisations, institutions or entities other than shipyards may be Sponsors when, subject to acceptance by the Board of Directors of PYMAR, they have entered into an Affiliation and Contribution Agreement with PYMAR in order to determine the categories in which the funds contributed may be used to cover guarantees. The Affiliation and Contribution Agreements must at least contain the following:

- Unconditional adherence to the Operational Procedures of the SGF.

- Amount of the contribution made, method of payment and conditions for repayment of the contribution.
- Identification and selection criteria for potential transactions to benefit from the guarantees.

Each of the Sponsors shall be the holder of a membership interest calculated by dividing the amount of the contribution made by the Sponsor in question by the total asset value of the SGF at the time the contribution is made, stated in percentage terms. In general, the membership interest may not be changed except for any of the following reasons:

- New contributions made by either the Sponsor in question, or by other Affiliated Entities, which change the percentage composition of the SGF.
- Inclusion in the SGF of remuneration due to the Sponsor in question as determined in the respective Affiliation and Contribution Agreement, which will increase the membership interest in accordance with the provisions of Procedure VI, section 2.
- Expulsion of any Affiliated Entity, in the cases and by means of the procedure indicated herein.
- If applicable, Sponsors leaving the SGF, according to the terms and subject to the provisions of their respective Affiliation and Contribution Agreements.

In general, the membership interest gives the Sponsor the right to receive remuneration and the respective percentage of the amount of the SGF remaining upon its liquidation, once all the obligations thereof have been met.

**5.-Members:** Any parties which, as Affiliated Entities, may also request that guarantees charged to the SGF be provided, shall have the status of Members. Only companies that have the status of shipyards and, therefore, those whose business purpose is primarily or solely the construction, repair and/or conversion of ships and other floating craft, may be Members of the Fund.

Any shipyards which have given a mandate to PYMAR for the establishment of the SGF shall be Members thereof, as well as any others which, after the respective approval of their membership by the Board of Directors of PYMAR, in its capacity as Sole Director of PYMAVAL and the Fund Management Company of the SGF, have met all the requirements for membership thereof, paid the amount of their contributions, formally undertaken to perform their commitments and the obligations inherent in their status as a Member, and may therefore obtain guarantees charged to the SGF; all this in accordance with these Operational Procedures. The Members of the SGF shall accept at least the following commitments and obligations:

- a) Adhering to and complying with the current Operational Procedures of the SGF and any others which may be adopted in the future.
- b) Submitting to PYMAR, as soon as they are available but in any event within seven (7) months of its financial year-end, a copy of the individual and, if applicable, consolidated annual accounts, audited by companies of sufficient renown in the opinion of PYMAR.
- c) Providing to PYMAR, as soon as they are available but in any event within three (3) months of the end of each calendar half year, the unaudited individual and, if applicable, consolidated Balance Sheet and Profit and Loss Account for the periods ending 31 December and 30 June, duly signed by an authorised representative, as well as authorisation, if applicable, to obtain information from the CIRBE (Bank of Spain Credit Reporting Agency) and the RAI (Spanish Bad Debt Register); or when requested to do so by PYMAR.
- d) Sending PYMAR periodic information on the situation and prospects of the main technical and economic parameters of the shipyard and any other information which PYMAR might reasonably request at any time.
- e) Allowing PYMAR to inspect the shipyard and all the ships under construction, whether or not they are subject to guarantees of the SGF, at any time.

Members shall have the rights recognised in these Operational Procedures, and shall at least be entitled to request guarantees and receive information in relation to the resolutions adopted by the Governing Bodies which may affect them individually or in general.

Any shipyards that wish to join the SGF as Members must submit an application to PYMAR, including the following requirements:

- a) Formal request to join the SGF.
- b) Detailed description of the transaction for which a guarantee is requested, as well as all relevant documentation which may be necessary in order to carry out an exhaustive appraisal of the transaction.
- c) Articles of association of the company and the latest update and/or amendment to the articles. Detailed information on its shareholders and, if applicable, company agreements.
- d) Copy of the licenses from the responsible authorities to carry out the activities undertaken by the shipyard. Limits or maximum construction capacities.
- e) Detailed description and plans of the shipyard facilities. Construction equipment. Description of the shipyard's management and production systems.
- f) Changes in the shipyard's staff over the last three years, with a breakdown of permanent and temporary staff. Organisation chart of the company.
- g) List of latest constructions, including the main characteristics and the ship-owners responsible for them.

- h) Audited financial statements for the last three years. If the applicant is a recently incorporated company, it shall provide its Business Plan for at least three years.

According to all of the above, the Management Committee of PYMAR shall draw up a proposal to be submitted to the Board of Directors which, if the decision is favourable, will determine the amount of the contributions to be made.

If the Board of Directors of PYMAR, in its capacity as Sole Director of PYMAVAL and the Fund Management Company of the SGF, should approve the inclusion of a shipyard in the SGF, this shall take effect upon payment of the contribution for the approved amount and acceptance in writing of the commitments and obligations contained in the Operational Procedures. The applicant shipyard shall be a full Member of the SGF once the aforementioned document has been formalised and the contribution has been paid in full. If these requirements are not met, the applicant shipyard shall not acquire the status of a Member of the SGF, even if its inclusion has been approved in accordance with the provisions of these Operational Procedures.

The status of a Member of the SGF can only be lost by means of a resolution for the expulsion and removal of the Member in question adopted by the Board of Directors of PYMAR at the request of the Management Committee, due to actions or omissions which lead or could reasonably lead to a loss for the SGF, the cause of which is directly attributable to bad faith, wilful misconduct or negligence, including actions or omissions which result in at-fault claims due to the presence of any of the causes described above, or due to a breach by the Member of these Operational Procedures. As a penalty, any Member removed in this way shall irretrievably lose the net asset value of its membership interest, which shall proportionally accrue to the rest of the Affiliated Entities, all this notwithstanding any actions or rights to which PYMAVAL might have recourse against the Member in question, as a consequence of the transactions guaranteed at the request of the latter and which have resulted in a (total or partial) claim, and/or the loss or damage caused.

Each of the Members shall be the holder of a membership interest calculated by dividing the amount of the contribution made by the Member in question by the total asset value of the SGF at the time the contribution is made, stated in percentage terms. In general, the membership interest may not be changed except for any of the following reasons:

- New contributions made by either the Member in question, or by other Affiliated Entities, which change the percentage composition of the SGF.
- Inclusion in the SGF of the remuneration due to the Sponsor in question as determined in the respective Adhesion and Contribution Agreement, which will increase the membership interest in accordance with the provisions of Procedure VI, section 2.

- Expulsion of an Affiliated Entity, in the cases and by means of the procedure indicated herein.
- If applicable, Sponsors leaving the SGF, according to the terms and subject to the provisions of their respective Adhesion and Contribution Agreements.

The membership interest gives the Member the right to request guarantees, according to the terms provided for herein, as well as the right to receive the respective percentage of the amount of the SGF remaining upon its liquidation, once all the obligations thereof have been met. In the event of liquidation of the SGF, the net asset value due to the Member shall be offset, as far as possible and for the concurrent amount, against any obligations which, if applicable, the Member may have to pay to the SGF by virtue of transactions guaranteed by the SGF which have resulted in a (total or partial) claim.



#### **IV. MANAGEMENT OF THE SGF**

PYMAR and its senior bodies (Board of Directors and Management Committee) shall be responsible for the administration and management of the SGF. For this purpose, all the services to be provided by PYMAR shall be regulated in a Management Contract, as well as the cost of such services, which shall be borne by PYMAVAL.

The basic operating principle of the SGF shall be that, in order to achieve its objectives, its management shall be carried out with the utmost respect for the principles of solidarity, financial stability, future sustainability and the adaptation of resources to these purposes. The economic effects of each claim shall thus be borne by PYMAVAL and, therefore, indirectly and jointly by all the Affiliated Entities, in proportion to the contributions made.

The budgetary, accounting intervention and financial control systems of the SGF shall be those stipulated by applicable regulations and, for any matter not determined by law, those decided by the Board of Directors of PYMAR in accordance with the principles of prudence, diligence and transparency.

With regard to the accounts and, in particular, the criteria and terminology relating to the assessment and coverage of the credit risk of the transactions of the SGF, the accounting provisions applicable to credit institutions shall be applied as far as possible.

The risk management policies shall be based on the principles of certainty, profitability, diversification and liquidity, on the basis of which a risk rating system shall be implemented and applied to each new guarantee transaction requested. The Board of Directors of PYMAR shall review the performance of the SGF and compliance with the principles in question on a quarterly basis.

Furthermore, in relation to the transactions submitted for approval, and taking into account the score obtained in the aforementioned risk rating system, the Board of Directors of PYMAR shall be authorised to request, when it deems it necessary and/or appropriate by virtue of the viability of the transactions and/or the solvency of the beneficiary or applicant Member, that an independent report analysing such aspects be submitted.

Similarly, the overall management policy of the SGF shall be based on the principles of sustainability, certainty and solvency of the guarantee system. At least once a year, the Board of Directors of PYMAR shall therefore carry out a review of any aspects which could have an influence on such management in order to constantly maintain the level of financial solvency and sustainability of the guarantee system. These aspects include the following: the conditions for granting guarantees, paying particular attention to the updated assessment of the risk

involved in each transaction, the guarantees provided by the guaranteed entities and any variations in the different concentrations of risk which may arise; the level and distribution of the various resources of the SGF; quantification of the premiums and fees which are established by the SGF, etc.

Any payment which PYMAVAL has had to make by virtue of the guarantees provided by the SGF or as a result of the management and administration thereof, shall be deemed a claim and shall therefore be charged to the SGF, the aforementioned payments being subject to the principle of solidarity of the SGF, which shall be borne by all the Affiliated Entities in the Fund. However, the obligation to repay these amounts paid and charged to the SGF, either on the part of the applicant Member of the guarantee transaction which has led to the claim, or the beneficiary thereof, as applicable, shall in any event continue to apply.

Possible recoupments and/or payments, arising from counter-guarantees or any other means, shall be returned to PYMAVAL and, once they are available, shall increase the assets of the SGF.

All the expenses of PYMAVAL, including, but not limited to, those arising from its management and administration, shall be deemed subject to the achievement of the objectives for which the SGF was created. The expenses in question shall therefore be deducted from the income generated by the SGF.

The annual accounts of PYMAVAL shall be subject to an audit, even when the former is not legally bound to do this. In any event, an annual audit and external management report of the SGF shall be carried out annually in order to evaluate the level of compliance with these Operational Procedures, the management carried out, the degree of solvency and its future sustainability.

### **Price of the Guarantees: Fees and Premiums**

In general, each guarantee transaction shall be subject to a price charged to the Member or the beneficiary of the guarantee transaction in question, which shall consist of an “**Arrangement Fee**”, a “**Risk Premium**” and a “**Capital Premium**”. The amount of the Arrangement Fee and the Risk Premium shall be proposed in each specific case by the Management Committee of PYMAR for approval by the Board of Directors of PYMAR, and in the particular case of Risk Premiums the amount will depend on the particular economic, technical, commercial and legal characteristics of the transaction, including, among others, the solvency of the guarantee applicant, type of transaction, expected term, level of risk undertaken and concentration thereof, etc.; all this subject to objective and reasoned criteria.

In addition, any request for the amendment of a guarantee approved by the Board of Directors of PYMAR which changes the initially agreed conditions and, in the reasoned opinion of the

Management Committee of PYMAR, may be deemed a substantial amendment, shall entail the payment of a “**Restructuring Fee**”.

Both the Arrangement Fees and the Restructuring Fees shall be applied, in general, to the maximum amount guaranteed as principal and shall be paid when the guarantee or its amendment are formalised. They are aimed at offsetting the appraisal and approval expenses and, if applicable, those for the granting of the transactions.

The aim of the “**Risk Premiums**”, payable annually, is to cover the risks associated with the transactions, as well as the other administration costs of the SGF in relation to the control and management of the risks inherent in each transaction which are not covered by the Arrangement and/or Restructuring Fees.

The aforementioned premiums are calculated on the basis of the risks involved in each transaction and the counter-guarantees involved. The solvency and certainty of the guaranteed transaction and its impact on the general situation regarding the acceptance of risks of the SGF as a whole is therefore considered. For the above purposes, the following parameters shall be taken into account for the assessment of the risk of a specific transaction:

1. The score obtained by the transaction in application of the risk rating system mentioned in Procedure V.
2. The term of the guarantee transaction guaranteed.
3. The solvency of the respective Member and/or beneficiary, which shall be established by the prior financial analysis to which they shall be subject, based on objective criteria. In any event, this analysis of the Members of the SGF shall be carried out at least once a year.

In accordance with the above, the score obtained in application of the risk rating system, by means of a predetermined price table, shall allocate a “**base premium**”, stated in percentage terms, to which an adjustment item also stated in percentage terms shall be applied; this shall be determined by the other two parameters, namely the term of the transaction and the rating obtained by the Member or beneficiary as a result of the analysis of its financial solvency, although for transactions relating to financing guarantees for ship-owners, the highest adjustment item shall be applied, notwithstanding that in the case of Guarantees of Financing for Ship-owners in force during the period of construction of the ship (“pre-delivery”), the adjustment corresponding to the shipyard may be applicable provided that the risk assumed by the SGF can be comparable to the constructive one.

In short, the final resulting Risk Premium shall be obtained by adding the adjustment item to be applied, if applicable, to the base premium, together with the estimated percentage necessary to cover the administration costs; in other words, any costs, other than those of financial management, not covered by the respective Arrangement Fee and/or Restructuring Fee.

The "**Capital Premium**" shall cover the part relating to the remuneration on the capital contributed by the Sponsors. The Capital Premium therefore represents a higher price of the guarantee transactions. The amount of the Capital Premium shall be calculated in accordance with the provisions of section 3.4 (f) of the Communication from the Commission relating to the application of Articles 87 and 88 of the EC Treaty to state aid in the form of guarantees (2008/C 155/02) ("**Communication from the Commission**") in order to ensure that the remuneration on contributions meets the criteria of a "private investor".

Notwithstanding the foregoing, in the case of any guarantee granted by the SGF jointly and under the same conditions than other entity or entities, the sum of the Risk Premium plus the Capital Premium applicable by PYMAVAL must at least be equal to the price conditions of the other guarantors of the operation. In any case, it is established that the minimum total premium shall never be less than 0.62% per year.

An assessment of the level of the premiums shall be carried out on an annual basis, taking into account the effective claims percentage rate of the fund, in order to ensure that it is adequate to maintain the solvency and future sustainability of the SGF, as well as providing annual remuneration appropriate to the capital contributed by the Sponsors according to the terms stipulated in the Communication from the Commission.

### **Financial returns**

PYMAR shall carry out the financial management of PYMAVAL, in general, by means of investments in government securities, deposits and interest-bearing accounts with institutions of recognised standing and in other investment instruments with the highest credit rating which enable a return to be obtained on the resources of the SGF (hereinafter referred to as the "**Financial Returns**").

Any Financial Returns generated from the administration and management of the fund, once the part necessary to cover the costs arising from financial management has been deducted, as well as the part of the financial return relating to the remuneration of the Sponsors, shall be added to the SGF.

## **V. GOVERNING BODIES**

As PYMAR is the fund manager of the SGF and the sole director of PYMAVAL, through which the fund has been set up, it is the responsibility of its senior bodies (Board of Directors and Management Committee) to carry out the administration and management functions of PYMAVAL and the SGF.

### **1.- Board of Directors**

The Board of Directors of PYMAR is the management, control and administration body of the SGF. The Board of Directors of PYMAR, if it should decide to do so, may delegate all of its functions relating to the management of the SGF to the Executive Committee of PYMAR.

The affirmative vote of at least two thirds of the members, present or represented at the meeting, of the Board of Directors or the Executive Committee, as applicable, shall be required for (i) the delegation of functions to the Executive Committee, (ii) the assignment of powers to the Management Committee, (iii) in general, the adoption of resolutions with regard to the inclusion of new Members, their expulsion and removal, and (iv) the granting of new guarantees.

### **2.- Management Committee**

The Management Committee shall be responsible for any matters relating to risk management and the analysis of requests for guarantees to be granted to the Members of the SGF, and any transactions which, as part of the proper management of the SGF, may be submitted to the Board of Directors of PYMAR, according to the terms described herein. Specifically, and without limit, the Management Committee of PYMAR shall be responsible for:

- Analysing the applications of new Members, as well as all requests for guarantees submitted to the SGF by its Members, issuing its report to the Board of Directors of PYMAR in relation to such requests.
- Submitting a report and proposal on the applications of new Members to the Board of Directors of PYMAR, in relation to the granting of new guarantees and the terms thereof, requests for amendment of previously approved transactions and transactions in general.
- Submitting an additional independent report to the Board of Directors of PYMAR which analyses the viability of the transaction and/or solvency of the beneficiary or applicant Member: (i) when required due to the nature of the new transaction requested, either

because of the amount and/or risk thereof and/or due to the concentration of risks; and in any event (ii) when requested by the Board of Directors of PYMAR.

- Approving or refusing requests for guarantees to be granted and the terms thereof, requests for the amendment of previously approved transactions and, in general, any transactions for which it has been delegated this power by the Board of Directors.
- Establishing the criteria to be applied for the monitoring of risks of the SGF and supervising the risk management systems and tools of the SGF, including the risk rating system, as well as systemising the information relating to risk management. Periodically carrying out monitoring of the risk portfolio, assessment of the various counter-guarantees granted for transactions, and the risk ratings of transactions; reporting to the Board of Directors of PYMAR on a quarterly basis with regard to the most important incidents and conclusions encountered in the performance of its functions and the results of the monitoring, as well as any recommendations which, in accordance with the above, and if applicable, may be made in relation to changes in the Risk Policy, organisational procedures changes, specific actions, etc.
- Preparation of reports in general for the Board of Directors when necessary or required.
- Proposing to the Board of Directors the Risk Policy by which management of the SGF shall be governed in general terms; this shall be subject to review at least once a year.
- Proposing to the Board of Directors the adoption of all kinds of measures or the carrying out of all kinds of actions for the proper management of the risks undertaken by the SGF.
- Calculating the asset value of the SGF on 31 December of each calendar year, as well as on each of the dates on which a new Affiliated Entity joins or when new contributions are made by existing Affiliated Entities.
- Drawing up documentation detailing the internal procedures for the application, interpretation and performance of the stipulations of these Operational Procedures.

## **VI. RESOURCES**

The SGF shall benefit from financial resources through the channels listed below:

1. Contributions from Members.
2. Contributions from Sponsors.
3. Contributions from PYMAR.
4. Returns.

All contributions must necessarily be made by means of monetary consideration and with transfer of ownership, becoming part of the assets of PYMAVAL and, therefore, of the SGF. All resources of the SGF shall take the form of liquid assets.

### **1.- Contributions from Members of the SGF**

The contributions grant the Members the status of an Affiliated Entity and also determine the maximum theoretical capacity for requesting guarantees of each Member of the SGF, according to the terms resulting from these Procedures. The contributions are not converted into shares, nor do they grant the Member any rights other than those regulated herein. The value of the contributions shall be stated as a percentage or membership interest and shall vary according to the total asset value of the SGF.

#### *1.1.- Amount*

The amount of the contribution made by each Member shall at the very least be that determined by the Board of Directors of PYMAR when the Member joins. If a Member, at any time, should wish to increase its contribution, it shall make a duly supported request to the Board of Directors of PYMAR, which shall approve or refuse the request in question. The appraisal of these types of requests shall be fundamentally based on the capacities of the Member, the capacity and situation of the SGF and on maintaining a balance between the various resources which make up the SGF.

Under no circumstances may the Members request a decrease in their membership interest or the recoupment or repayment of any amount of their contributions to the SGF.

#### *1.2.-Payment*

Payment by each Member of the SGF of the initial contribution and any which are subsequently approved by the Board of Directors of PYMAR, if applicable, shall be made by means of a single payment. No contribution shall be deemed to have been made until its effective payment date.

### *1.3 – Valuation and effectiveness*

Contributions made by the Members of the SGF shall be allocated jointly to the payment of the guarantees and any other expenses which may be payable, irrespective of the origin thereof and the party that requested the guarantees that have led to the claims.

For these purposes, as well as for the calculation of the value and returns on the SGF, the contribution made shall be deemed effective from the last calendar day of the month in which it has been paid.

The amount of the contributions shall initially determine the capacity for requesting guarantees of each Member, according to the terms and subject to the provisions of these Procedures.

The value of the membership interest of each Member shall be determined on an annual basis, according to the overall asset value of the SGF and the total amount of the contributions.

## **2.- Contributions from Sponsors of the SGF**

These are the amounts that any organisations, institutions or entities, other than shipyards, may voluntarily contribute to the SGF in order for it to achieve its objectives. The fact that these contributions are made does not grant them the status of Members of the SGF, but Affiliated Entities thereto.

Sponsorship contributions shall be governed by the provisions herein and by the stipulations of the Affiliation and Contribution Agreements or any other acts or provisions which lead to such contributions being made.

The Sponsors shall be entitled to receive appropriate remuneration on their contribution in accordance with “private investor” criteria, according to the terms established in section 3.4, point f) of the Communication from the Commission, which shall consist of two items:

- a) The part due to them, by virtue of their membership interest, on the Financial Returns of the SGF.
- b) The part due to them, by virtue of their membership interest, on the Operating Income of the SGF.

The Sponsors may choose to receive this remuneration annually; in other words, at the end of each financial year, or add it to their contribution to the SGF.

If a Sponsor has opted to add the remuneration to its contribution, its membership interest in the SGF will consequently be increased.



### **3.- Contribution from PYMAR**

These are the contributions that PYMAR makes to the SGF, which may be increased by means of a resolution adopted by the General Shareholders' Meeting of PYMAR.

### **4.- Returns**

Returns obtained on the following items shall be added to the SGF:

- Financial Return: this shall be made up of all the Financial Returns obtained from the management of the resources of the SGF, once the cost of this financial management and the part of the financial return relating to the remuneration of the Sponsors has been deducted.
- Operating Income: this shall be determined on the basis of all of the income obtained by PYMAVAL as a consequence of the guarantees granted, after deducting any current and operating expenses of PYMAVAL other than financial management expenses, as well as the part of the operating income relating to the remuneration of the Sponsors.

## VII. GUARANTEE SYSTEM

The system for granting guarantees shall be established by the Board of Directors of PYMAR taking into account the current circumstances, in accordance with the general principles set out herein.

### 1.- Limits

#### *1.1.- Overall limit for guarantees granted and charged to the SGF*

The total amount of the guarantees in force at any time which have been provided and charged to the SGF may not be more than four (4) times the value of the SGF.

According to the Risk Policy and the situation of the SGF, guarantee limits shall at all times be established which are equal to or less than the SGF.

The value of the SGF shall at all times be defined as an amount equal to the sum of the assets in which the existing resources are materialised, which at all times cover the total of the guarantees in accordance with these Operational Procedures.

The amount of the guarantees granted in favour of each Member shall in any event also be limited by the value of the SGF at any time. The risks undertaken by each shipyard shall therefore not exceed certain percentages of the overall value of the SGF, which shall be set by the Board of Directors of PYMAR according to the Risk Policy.

#### *1.2.- Guarantee limits for individual transactions*

The amount of the guarantee shall be set on a case-by-case basis for each transaction, with the following maximum limits being established:

- In the case of repayment guarantees, the maximum guaranteed amount may be up to 80% of the total amount relating to the advance payments to be made by the ship-owner in relation to the price of a ship prior to its delivery, according to the provisions of the construction contract.
- In the case of financing transactions by way of an advance on payment instalments and/or other economic rights arising from contracts for the construction, repair, modernisation or conversion of ships, the maximum guaranteed amount may be up to an amount equivalent to 80% of the total amount of the instalment and/or economic right to which the financing relates.

- In the case of financing transactions for ship-owners, the maximum guaranteed amount may be up to an amount equivalent to 80% of the financed amount pending payment at any time.

In addition to the aforementioned limits for each individual transaction, the maximum cumulative limit of the risk guaranteed by the SGF at any time, and for each specific construction, is established as equivalent to 30% of the price of the ship, whether one or more guarantees are granted. All this taking into account that guarantees may only be granted for transactions relating to ships the price of which is no more than THREE HUNDRED (300) MILLION EUROS.

Notwithstanding the above, under no circumstances shall any type of guarantee be granted for companies in a critical situation or a situation of current or imminent insolvency. For the above purposes, the concept of a “firm in difficulty” provided for in the Communication from the Commission (2004/C 244/02) on “Community guidelines on state aid for rescuing and restructuring firms in difficulty” shall be taken into account as a guiding principle.

### *1.3.- Limit for guarantees granted in favour of each Member*

Notwithstanding the provisions of section 2 above, the maximum guarantee capacity of each Member of the SGF shall be determined by the amount of their share.

Each guarantee granted shall entail a reduction in the guarantee capacity in proportion to the amount granted. The Board of Directors of PYMAR shall establish the appropriate assignment of resources prior to the approval of each transaction, which shall be at least a quarter of the guarantee granted. The guarantee capacity of each shipyard at any time shall be determined by the amount of its membership interest not subject to current transactions.

The assignment of resources as a limit on the theoretical capacity for obtaining a guarantee of each Member of the SGF constitutes an internal control mechanism over the remaining capacity to obtain further guarantees, but does not in any way mean that the resources that cover the guarantees provided are limited to the assigned resources, as the SGF shall be jointly and severally liable to third parties for the total amount of the guarantees provided in the event of a claim.

The capacity of each shipyard Member to obtain guarantees at any time will be determined by the level of risk of the existing guarantees granted and charged to the contributions made by the Member and by the overall situation of the SGF as a whole.

The guarantee capacity of Members of the SGF shall be restricted in the case of the guarantees of Financing for Ship-owners. Such guarantees may only therefore be granted subject to the

respective assignment of the sponsorship contributions made through Affiliation and Contribution Agreements in which this is expressly established in its own articles or in any other instrument subscribed for this purpose.

*1.4.- Limit on the term of the guarantees granted in favour of each Member and/or beneficiary:*

The term of the guarantees shall be determined individually for each transaction in accordance with the specific circumstances present in each of them.

Notwithstanding this, no guarantee shall have a term of more than 5 years. Only in the case of Guarantees of Financing for Ship-owners may their term be extended on an exceptional basis, by means of a resolution adopted by the Board of Directors of PYMAR, for a maximum additional period of up to seven years.

## **2.-Increase in the guarantee capacity of Members**

Observing in any event the limits established in sections 1.1 and 1.2 above, the guarantee capacity of the Members may be increased by means of:

- a) Contributions from Sponsors: Sponsors that have made sponsorship contributions may request that their contributions be allocated to guaranteeing transactions of a specific type, according to the terms and criteria established by the Affiliation and Contribution Agreements which gave rise to such contributions. In such a case, part of the assigned resources covering such contributions shall be deducted from the maximum guarantee capacity for the sponsorship contributions. There will therefore be a lower use of the guarantee capacity of the Member of the SGF that carries out the guaranteed transaction.

Contributions from Sponsors shall be essential for the granting of guarantees of Financing for Ship-owners, according to the stipulations of section 1.3 above.

- b) Free Funds: These are defined as the part of the contributions from PYMAR or other contributions made by Sponsors which do not have a pre-established purpose and which are used to proportionally increase the capacity for obtaining guarantees of all the Members of the SGF. For this purpose, the Board of Directors of PYMAR shall determine the rate to be applied for each year, which will be derived from ratio of free funds and contributions from Members.
- c) Provisional Contributions: On an exceptional basis, when agreed by the Board of Directors of PYMAR, each of the Members may increase their guarantee capacity for a specific transaction, by means of a Provisional Contribution. The Provisional Contribution shall only cover the guarantee for which it was provided. If the guarantee should expire without it being enforced, the Provisional Contribution shall be reimbursed. The Provisional Contribution shall be set up on a case-by-case basis by means of a contract which shall determine the legal framework applicable to it. The amount of the Provisional Contributions made by each Member may not under any circumstances, at the time of their approval, be more than 25% of the net asset value of its membership interest in the SGF, nor shall the cover represent more than 50% of the requested guarantee.

### **3.- Liability of PYMAVAL**

Whatever the value of the guarantees provided by PYMAVAL and charged to the SGF, its liability shall in any event be limited to the value of the SGF at any time. Under no circumstances shall PYMAR be liable for the obligations undertaken by PYMAVAL and charged to the SGF.

### **4.- Compliance with the decisions of the Board of Directors**

The Board of Directors of PYMAR shall in each case establish and define any matters relating to the SGF and its operation which are not expressly provided for herein.

## **VIII. WINDING UP OF THE SGF**

The SGF may not be wound up if there are guarantees in force. Notwithstanding this, once the above condition has been met, the SGF and the functions that it performs may be wound up on any of the following grounds:

1. Due to the causes which led to its establishment no longer existing.
2. Due to the manifest impossibility of achieving the objectives for which it was set up, either due to the lack of real capacity to meet the commitments undertaken or because this requirement is deemed to have been met due to the lack of usage of the system over a period of one year.
3. By agreement of PYMAR, in its capacity as Sole Director of the company and Fund Management Company of the SGF, at the request of all but two of the Members.

Notwithstanding the above, the SGF shall be wound up according to the requirements of law.

If the SGF should be wound up, any balances which, as at the winding up date, may exist after all the obligations payable have been met, shall be distributed among the Affiliated Entities in proportion to the amount of their respective contributions to the SGF.

No Member may claim any amount by virtue of its contributions until the winding up of the SGF has been completed.

The winding up of the SGF shall lead to the winding up and liquidation of the Subsidiary Company, and any resulting retained earnings or liquidation proceeds shall be due solely to PYMAR, as the single shareholder of the Subsidiary Company.

## **IX. DISPUTE RESOLUTION**

Any disagreement which may arise in relation to the effectiveness, interpretation or application of these procedures, including the system for the approval and granting of guarantees, shall be discussed and resolved, in the first instance, at a meeting of the Board of Directors of PYMAR. If the disagreement should continue, the parties agree to submit its resolution to arbitration, the matter being resolved by a single arbitrator chosen by mutual agreement of the parties. The award shall be binding on all the parties to the disagreement. Unless otherwise agreed by both parties, arbitration in law shall be followed and will take place in Madrid, being pursued in accordance with the provisions of the Arbitration Act 60/2003, of 23 December.