



OPIC Claims: The Picture To-Date

The Overseas Private Investment Corporation's (OPIC) record of political risk claim payments is extensive and transparent.

As of September 30, 2006, OPIC had made 284 claim settlements totaling \$967.5 million. These settlements have been structured either as cash payments to investors (\$611.5 million), or as OPIC guaranties of host government obligations, or similar arrangements (\$365 million). In accordance with those arrangements, OPIC has paid \$130 million in addition to the up-front cash settlements described above, for a total of \$741.5 million in cash payments. OPIC's recoveries on claims paid (in the form of cash, recoveries on guaranteed obligations and receivables) amount to 92 percent of total claim settlements, and OPIC anticipates additional recoveries.

As to each claim, OPIC maintains a public information file pursuant to its own regulations and the Freedom of Information Act (FOIA) that can be accessed by appointment. Recent (1996-present) claim determinations can be viewed on OPIC's website (www.opic.gov). Researchers have made use of this material to prepare analyses of OPIC's claim determinations and to satisfy a particular client that OPIC has handled claims as the insured investor would expect.

OPIC insures against three political risks: currency inconvertibility, expropriation, and political violence.

Overall Trends

Based on OPIC's overall claims experience, inconvertibility has been the most pervasive risk, accounting for 61 percent of claims paid (expropriation claims account for 23 percent and political violence claims account for 16 percent).

Apportioning claim payments by type of coverage presents a very different profile of experience. Inconvertibility coverage extends to returns of the insured investment and earnings on it, and so claim amounts were often small, representing a single dividend or royalty payment. In contrast, like most political risk insurers, OPIC covers loss resulting from total expropriation, not partial takings or diminution in the value of investments, and so expropriation claim amounts have been relatively large. They account for 85 percent of total OPIC claim settlements, whereas inconvertibility claims account for just 12 percent.

Inconvertibility

In recent years, inconvertibility claims have been few and far between. OPIC paid a claim in 1992 and another 1993, both arising from the Brazilian debt rescheduling. There were no subsequent inconvertibility claims until 2006, when OPIC paid a claim in Venezuela for payments delayed by foreign exchange controls. For most of this recent period, market-driven systems of allocating foreign exchange replaced permit-driven systems, tending to replace insured inconvertibility risk with uninsured devaluation risk. Nevertheless, the current Venezuelan experience demonstrates that the risk of reinstatement of foreign exchange controls is real.

Expropriation

In the 1970s, OPIC paid several large claims for expropriation arising from nationalization of extractive industry and infrastructure projects in Latin America and the Caribbean, and, in the 1980's a series of smaller claims arising from the Iranian Revolution. However, most claims during this period were for currency inconvertibility, with a few political violence claims interspersed.

In the past ten years, OPIC has again begun to face expropriation claims, but of a different

character. The claims of the 1970s were based on overt nationalizations, whether direct or through a series of measures intended to effect a taking (“creeping expropriation”). In the Iran claims, there was at least a discernable intent to drive out foreign investors by depriving them of fundamental rights, although the Iranian government did not concede that. The recent expropriation claims arise from more complex investment disputes – privatizations with unforeseen consequences, joint ventures that did not work out as expected, economic crises in which it became expedient to ignore commitments to foreign investors, and alleged abuses of the “police power” (the power to tax and regulate). These claims often reflect economic and legal uncertainties rather than a conscious intent to take an investor’s rights or property, and so they have been much more complicated to resolve as between the insurer and the investor.

Also, subsequent recovery negotiations with the foreign government have been commensurately more contentious, as governments are more likely to deny responsibility, even when they are willing to accept the same legal norms of behavior on which the determination of expropriation was based.

In response to the changing nature of expropriation claims, some investors have sought greater specificity in policy language, for example explicit recognition that some particular category of alleged wrongful act is covered: contract repudiation, denial of justice, failure to provide proper protection or fair and equitable treatment, failure to honor a sovereign payment obligation, regulatory taking etc. Some insurers have obliged, while others have noted the tension between specificity and scope of coverage.

As to the future, recent events in Argentina, Venezuela, Bolivia and Ecuador raise alarms that we may see a return to the overt nationalizations of the 1970s.

Political Violence

Political violence claims have been relatively few in number (16 percent) and dollar amount (3 percent). Some have been for the loss of a single vehicle. The largest political violence claims have been in Africa, with respect to three projects: a mining project in Sierra Leone (\$15,704,500), a manufacturing project in the Democratic Republic of Congo (formerly Zaire) (\$3,900,000), and a rubber project in Liberia (\$5,215,089). The mining project in Sierra Leone was a major foreign exchange earner for the central government, and was consciously targeted by rebels as a means of causing financial loss to the government, an interesting case study for any underwriter who views political violence as a random event.

Political violence claims (with some possible exceptions for claims under bilateral investment treaties) do not give rise to claims against any responsible party (unlike expropriation claims), nor do they lead to the transfer to the insurer of currency or rights to currency (unlike inconvertibility/transfer claims), and so there is little realistic prospect of recovery. OPIC’s underwriting assumption is that political violence claim payments will lead to total write-offs. The good news is that most political violence claims are small; the bad news is that they seem to be occurring with greater frequency.

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Overseas Private Investment Corporation (“OPIC”) is the United States government agency that is focused on supporting U.S. private investment in the developing world and emerging market economies. OPIC provides support in the form of insurance against political risks, direct loans, loan guaranties, and through the equity investment that is made by private investment funds that are partly financed by OPIC-guaranteed debt.