

## CLAIMING UNDER POLITICAL RISK INSURANCE: A PRACTICAL GUIDE

### INTRODUCTION

Political Risk Insurance ("PRI") protects assets and financial interests against losses caused by certain types of political action and political violence. It is typically a bespoke product that is tailored to particular risks. It may be taken out by owners of assets, investors in projects, and others. For commentary on PRI, including what it covers and how it may be structured, please see our briefing [here](#).

In this guide we consider some of the key things that insureds should be thinking about if it appears that there is or may be a claim under PRI.

### CLAIM OR CIRCUMSTANCE?

As soon as issues arise in relation to an insured investment, it is important to consider whether it is necessary to inform insurers and, if so, what information is to be provided. Consider in particular whether there is (a) a claim on the policy or (b) circumstances which have the potential to give rise to a claim. If it is (b), consider whether the policy permits or requires an insured to make a notification of circumstances.

Both (a) and (b) may be difficult to identify. This is particularly so in PRI claims where it may be unclear what has happened (for example, whether a counterparty is expropriating an asset) and/or why (for example, whether the counterparty is acting at the direction of the government).

It is important to assess the position carefully, objectively and promptly. Late notification can have serious consequences, including in some circumstances preventing an insured from bringing a claim at all (for example, where notification requirements are a condition precedent to cover).

### POLICY REQUIREMENTS

If there is a claim or a circumstance which may give rise to one, you need to consider what must be provided to insurers and when. If policy requirements are not met, this may impact the cover available, including in some circumstances preventing the claim entirely. Consider in particular:

#### Timing:

- Consider whether claims or circumstances must be notified within a certain timeframe. Policies may provide specific timelines (for example within a specified number of days of an event happening), or provide that notifications must be provided immediately or as soon as reasonably practicable, etc. It is important to comply with these requirements. Even where no fixed timeframe is specified, a delay may impact whether a claim is payable. Claims will also need to be notified

#### Points to consider

- Is there a claim or circumstances which have the potential to give rise to one?
- What information needs to be provided to insurers and when?
- Are there any restrictions on what information can be shared with insurers?
- Could there be other losses or third-party claims? Consider whether and how to raise these in the notification.
- Make sure that evidence is recorded and obtained.
- Are there other protections which might respond? Are there protections in the contract? Is there a relevant Bilateral Investment Treaty?
- What rights do insurers have to conduct any claim?
- Consider insurers' subrogation rights and how they might apply in practice.
- Is there a waiting period applicable to the claim?
- What is likely to happen on receipt of a claim or notification? For example, are insurers entitled to amend the cover?

during the policy period unless the policy provides a short grace period for claims which arise during the period to be notified shortly afterwards.

- Where there is any doubt, it is generally best to err on the side of caution and make a notification as soon as possible.

**Substance:**

- The policy will normally specify what information must be provided to insurers in a notification, which might include providing a reasonable amount of detail about the claim including where, when and how it occurred. There may also be a requirement to quantify the loss. Wordings vary considerably, and should be followed carefully, as a notice which does not contain the required content might not be valid.
- A claim under PRI may relate to sensitive political matters. Consider at the outset whether there are restrictions on what information may be provided to insurers (for example in an agreement with a counterparty) and how any such restrictions interact with policy obligations. If there is a tension, consider raising this with insurers to see if any solutions are available, such as insurers receiving information subject to confidentiality undertakings.
- When drafting a notification, consider whether there are other related claims that might arise. Even if the immediate consideration is loss of insured assets, is it possible that there might also be claims from third parties which might be covered by the policy? Policies often require that a notification of circumstances specifies why claims are anticipated, and therefore it is important not to overlook this.

**OTHER CONSIDERATIONS TO KEEP IN MIND**

**Evidence:** Political perils may not be straightforward to identify, and even harder to prove. PRI claims can require an investigation of the underlying facts to determine whether the loss was caused by a covered peril. Evidence held by the insured (for example, correspondence with counterparties which sheds lights on whether the counterparty's actions were politically motivated or not) may be key. Make sure that potentially relevant evidence is recorded and retained.

**Other protections:** Events which trigger PRI may also give rise to other claims. In particular, insureds may also be able to bring claims against the relevant government under a Bilateral Investment Treaty. Other potentially relevant protections include claims under the relevant contracts themselves, indemnities, and state compensation. It will be necessary to consider these in the round, the suitability of calling on them in the circumstances, and how they interact. Indeed, some forms of PRI will require the insured to exercise contractual rights and provide cover if a judgment/arbitral award is not honoured.

**Insurers' Conduct Rights:** PRI will commonly give insurers the right to be involved in a connected third-party claim. Such provisions might specify that insurers' consent must be sought before certain steps are taken. It will therefore be important to ensure that those dealing with the insurance and those dealing with the third-party claim understand the requirements and are communicating with insurers as appropriate.

**Insurers' rights of subrogation:** If insurers pay out under PRI, they may then wish to exercise rights of subrogation to recover against your counterparty who is responsible for the loss. You may be required by the PRI to assist with insurers' efforts, and if you take steps (before or after payment) which impact those rights of recovery, that may impact your insurance claim. Consider what

that process may mean for relationships with counterparties and whether that affects your desire to claim on the PRI.

**What is likely to happen on submission of the claim/notification:** The policy may impose a 'waiting period' – that is, a period of time that must elapse before a claim becomes payable. If so, keep this in mind when making plans contingent on receipt of insurance funds. The insurers may have the right to amend the terms of the policy (for example, to remove cover for certain jurisdictions) on notice. This should be kept in mind when assessing the potential responsiveness of PRI.

## **ONCE A CLAIM HAS BEEN MADE**

**Keep insurers updated.** PRI policies will also often have clauses which provide that the insured must keep the insurers updated regarding the status of the claim and provide them with all relevant information (for example, key correspondence).

## **CONCLUSION**

PRI provides valuable protection to insureds and facilitates investment by reducing the risks involved. However, navigating a claim under a PRI policy is not always straightforward, and care needs to be taken to ensure that claims are notified and evidenced, and all policy obligations complied with.

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