

How to Present an OPIC Insurance Claim Effectively

More than anything else, the manner in which the insured presents its claim determines the timeliness of payment.

2. The application for compensation must demonstrate that the insured is entitled to compensation in the amount claimed. OPIC does not use claims forms or prescribe a specific format for the application.

3. We do provide guidelines for submitting inconvertibility, expropriation and political violence claims, and model certificates setting out contractually-based representations as to each category of claim.

4. The application should cover three general topics: the scope of coverage, the amount of compensation, and the investor's compliance with contractual procedures and duties.

5. The investor's own insurance contract is the primary reference. OPIC's guidelines for filing a claim amount to a checklist based on the standard 12-85 form contract, and the attached certificate is a recital of representations, warranties, duties, etc. in the standard contract form. Be sure to focus on the actual contract provisions, any amendments contained in your own contract, and the facts of your own situation.

6. OPIC claims are fact-intensive and situation-specific. OPIC's claim determination will require a narrative account of country events and their impact on your project. The process moves faster if the insured provides at least the raw material. OPIC can prepare the general background statement (with some delay), but a claim determination requires some explanation from the insured of the impact of country events on the project.

7. Insurance contract provisions on compensation for expropriation and political violence rely heavily upon accounting concepts. Ideally, the investor should utilize an accountant when filing such claims, at least to review the application.

8. Expect a two-way interactive process (i.e., questions, comments, requests for additional information, documentation). The more thorough the investor's initial application, the fewer stages will be required to reach a decision.

9. Compliance with duties of insured, especially notice and consent, avoids time-consuming peripheral disputes.

10. OPIC gives serious consideration to insureds' comments on preliminary adverse claims determinations. A meeting may be a useful followup on written comments.

DOCUMENTS TO BE SUBMITTED
IN CONNECTION WITH **INCONVERTIBILITY** CLAIM

1. Specification of the amount of local currency which the Investor is applying to transfer under the Contract.
2. Evidence that the inconvertible currency constitutes earnings from or returns of the insured investment, including, where applicable, certified copies of the resolutions of the board of directors of the foreign enterprise authorizing payment to the Investor of the investment earnings or returns of capital the Investor seeks to transfer under the Contract.
3. A statement of the Investor's understanding of any specific reason why the Investor has been unable legally to convert local currency through normal channels (apart from a general shortage of foreign currency).
4. Evidence that the Investor has taken all reasonable steps required to effect a transfer of the local currency under the relevant laws, decrees, regulations and administrative determinations of the government of the project country. This should include (1) a narrative of the Investor's attempts to transfer the currency, (2) copies of all applications to the government of the project country, correspondence and other documents relating thereto, (3) copies of all relevant laws, decrees, regulations, administrative determinations and agreements establishing (a) eligibility of the local currency for transfer if application had been made at the time the Contract was executed, (b) the procedure for effecting a transfer at the time of application, and (c) if the claim is for "active" blockage, the denial of the Investor's application to transfer.
5. Specification of the applicable exchange rate and the basis, under the Contract, for its computation. In this connection, indicate all taxes, charges and expenses applicable, as of the relevant date, to the transfer of the local currency into U.S. dollars, such as withholding taxes, exchange taxes, transfer taxes or margins, however designated.
6. Audited financial statements of the foreign enterprise confirming that the local currency was available for payment to the Investor.
7. A Certificate, signed by a responsible officer of the Investor empowered to act on behalf of the Investor, covering the points contained in the attached form.

The above list is not necessarily exhaustive. The above list should include most of the information required for a determination under the present standard form of contract, but OPIC may require additional items depending upon the facts and circumstances surrounding the individual case. Alternative documentation may be required under specialized forms of insurance contracts. Please consult with OPIC if you believe that any of the standard documentation would be inappropriate in connection with your specific claim.

DOCUMENTS TO BE SUBMITTED
IN CONNECTION WITH AN **EXPROPRIATION** CLAIM

1. A narrative description of the act or series of acts which are the basis of the claim, with whatever supporting material may be relevant and available (e.g., copies of laws, decrees, etc. documenting governmental action; requirements or provisions of law allegedly violated; provisions of law or agreements establishing the fundamental rights which the Investor contends were violated; evidence of the date on which the claimed expropriatory effect commenced).
2. In the case of expropriation of funds, evidence that the funds in question constituted earnings or a return of capital on the insured investment and an explanation as to why the act or series of acts complained of directly prevented the Investor from repatriating the funds and controlling them in the project country.
3. Financial statements maintained by the Investor for the foreign enterprise for the period in which the expropriatory effect commenced.
4. A statement as to whether the various adjustments to financial statements described in the insurance contract are required.
5. In the case of expropriation of funds, an explanation of the exchange rate which the Investor believes to be applicable under the insurance contract.
6. A certificate, signed by a responsible officer of the Investor empowered to act on behalf of the Investor, covering the points contained in the attached form.
7. A description of the measures taken by the Investor to preserve property, to pursue available administrative and judicial remedies, and to negotiate in good faith with the governing authority of the country in which the project is located and other potential sources of compensation.

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CERTIFICATE

In connection with the Application for Compensation for **Expropriation** filed by _____ [Investor's Name] on _____ [Date of application], under Contract of Insurance No(s). _____ [Contract No(s).] dated _____ [Date of the Contract] (the "Contract") between _____ (the "Investor") and the Overseas Private Investment Corporation ("OPIC"), I hereby make the following certifications:

1. In accordance with the Contract, the Investor has at all times since the Contract was signed carried out its investment in _____ (the "Foreign Enterprise") and the project as described to OPIC, continued to bear the risk of loss of at least 10% of the book value of its interest in the Foreign Enterprise, and remained the beneficial owner of the insured investment and an "eligible investor" as defined in 22 USC 2198(c).

2. The Investor has made no direct or indirect uninsured investment in the foreign enterprise since the date of the investment insured under the Contract.

3. Neither the Investor nor the Foreign Enterprise has received compensation from any source other than OPIC on account of the expropriation, retains effective disposition and control over commercially viable property of the foreign enterprise, or has been relieved of any obligation by the expropriation.

4. Neither the Investor nor the Foreign Enterprise has entered into any arrangement or agreement with any foreign governing authority with respect to acts within the scope of coverage under the Contract.

5. The Investor has taken all reasonable measures to preserve property, to pursue available administrative and judicial remedies, and to negotiate in good faith with the governing authority of [the project country] in its sovereign capacity and otherwise, and with all other potential sources of compensation.

6. The financial statements on which the Investor's application for compensation is based were prepared in accordance with accounting principles generally accepted in the United States, and the Investor's application for compensation includes all information material to OPIC's decision whether the adjustments required by Section 5.03 of the Contract should be made.

[Investor's Name]

BY: _____

ITS: _____

DOCUMENTS TO BE SUBMITTED IN
CONNECTION WITH A **POLITICAL VIOLENCE** CLAIM

1. A narrative description of the events constituting political violence, with whatever supporting information may be available (e.g., news reports, statements of witnesses, etc.).
2. A statement with any available supporting documentation as to the evidence of a direct and immediate causal relationship between political violence and the permanent loss of tangible property of the foreign enterprise. If you do not have civil strife coverage, then your statement must demonstrate that the violence constituted war, revolution or insurrection.
3. Evidence of the original cost, fair market value, reasonable cost to repair, and replacement cost of the lost property.
4. A statement as to whether compensation is requested on the basis of historical cost or replacement cost (if the insurance contract provides for such an election).
5. Computation of the "Investor's share" of the loss, as defined in the insurance contract, with supporting documentation.
6. Financial statements of the foreign enterprise, as of the date of loss.
7. A statement as to whether the various adjustments to financial statements described in the insurance contract are required.
- B. A description of the insured's efforts to preserve property and pursue and available remedies for return of or compensation for the lost property.
9. Any justification for a payment of estimated compensation or an advance payment.
10. A certificate, signed by a responsible officer of the Investor empowered to act on behalf of the Investor, covering the points contained in the attached form.

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