



Australian Government
Export Finance and Insurance Corporation

Political Risk Insurance

Legal Issues

October 2006

Key Issues in Policy Negotiation

- ▶ Policy wording detailed or general
- ▶ Clearly define scope of cover
- ▶ Limit exclusions
- ▶ Exclusions vs Reductions vs Policy Cancellation
- ▶ Determine level of causation required

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Scope of Cover

Standard Cover

- ▶ **Expropriation:** Host Government seizes Foreign Enterprise/Project or prevents it from operating
- ▶ **War Damage:** Damage or loss of Project property due to war/civil war
- ▶ **Political Violence:** Damage or loss of Project property due to civil commotion/revolution/insurrection
- ▶ **CI & ETB:** Host Government prevents conversion of local currency or transfer of funds out of Host Country

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Scope of Cover

Extension Cover

- ▶ **Selective Discrimination:** Host Government selectively and discriminatorily prevents operation of Project causing permanent cessation
- ▶ **Deprivation:** Host Government prevents Foreign Enterprise from exporting Project production
- ▶ **Breach of Contract/Arbitral Award Default/Denial of Justice:** Host Government fails to pay the amount due in relation to its breach of a contract
- ▶ **Forced Abandonment:** Total abandonment of Project at direction of Project Sponsor's government

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Example

Expropriation Cover

- ▶ Host Government seizes the Foreign Enterprise/Project or prevents it from operating through action taken or authorised by law, order or administrative action
 - Creeping expropriation
 - Total or partial expropriation

Conditions

- ▶ Host Government action violates international law in that it is:
 - Discriminatory
 - Not taken for a public purpose
 - Not the subject of appropriate compensation
- ▶ Insured has lodged claim for compensation with Host Government

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Example

Breach of Contract Cover

Host Government's failure, refusal or inability to pay the amount due in relation to its breach of a contract.

Arbitral Award Default Cover

Host Government's failure, refusal or inability to pay the amount due under an award in relation to its breach of a contract.

Denial of Justice Cover

Host Government prevents or delays obtaining of an award in relation to its breach of a contract.

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