

GUIDELINES FOR PRESENTING AN INSURANCE CLAIM¹

TO THE UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION (“DFC”)

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

- 1) The application for compensation must demonstrate that the Investor is entitled to compensation in the amount claimed. The DFC does not use claims forms or prescribe a specific format for the application for compensation. The DFC does provide lists of documents to be submitted for inconvertibility, expropriation and political violence claims. See the attached Annexes 1-A, 1-B, and 1-C. These lists are based on the DFC’s standard equity form contract. Other forms of contracts, such as the institutional lenders’ contract, may require different information.
- 2) The application for compensation should cover three topics: the scope of coverage, the amount of compensation, and the Investor’s compliance with contractual procedures and duties.
- 3) The Investor’s insurance contract is the primary reference. Be sure to focus on the actual contract provisions of your insurance contract, including any amendments to the contract, and the facts of the specific claim.
- 4) DFC claims are fact-intensive and situation-specific. The DFC’s claim determination will require a narrative account of loss-causing events and their impact on your Insured Investment. The claims determination process moves faster when the Investor provides at least the raw material. The DFC can prepare the general background statement (with some delay), but a claim determination requires some explanation from the Investor of the impact of loss-causing events on the Insured Investment.
- 5) 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 claim application.
- 6) Expect a two-way interactive process (i.e., questions, comments, requests for additional information, documentation). The more thorough the Investor’s initial claim application, the fewer stages will be required for the DFC to reach a decision.
- 7) Compliance with duties of the Investor, especially notice and consent, avoids time-consuming peripheral disputes.
- 8) The DFC gives serious consideration to the Investor’s written comments on preliminary adverse claims determinations. A meeting between the Investor and the DFC may be a useful follow up to such comments.

¹ In circumstances where DFC is the reinsurer, the primary insurer’s procedures will apply.

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

- 1) Specification of [the amount of local currency which the Investor is applying to convert] [OR] [the amount of [U.S. Dollars] which the Investor is applying to transfer] under the insurance contract.
- 2) Evidence that the currency constitutes earnings from or returns of the Insured Investment², 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 [convert] [OR] [transfer] under the insurance 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)] [OR] [to transfer [U.S. Dollars] through normal channels].
- 4) Evidence that the Investor has taken all reasonable steps required to effect a [conversion] [OR] [transfer] of the local currency under the relevant laws, decrees, regulations and administrative determinations of the government of the project country. This should include (A) a narrative of the Investor's attempts to [convert] [OR] [transfer] the currency, (B) copies of all applications to the government of the project country, correspondence and other documents relating thereto, (C) copies of all relevant laws, decrees, regulations, administrative determinations and agreements establishing (i) eligibility of the local currency for [conversion] [OR] [transfer] if application to [convert] [OR] [transfer] had been made at the time the insurance contract was executed, (ii) the procedure for effecting a [conversion] [OR] [transfer] at the time of claim application, and (c) if the claim is for "active" blockage (i.e. apart from general shortage of foreign currency), the denial of the Investor's application to [convert] [OR] [transfer].
- 5) For an inconvertibility claim, specification of the applicable exchange rate and the basis, under the insurance contract, for its computation. In this connection, indicate all taxes, charges and expenses applicable, as of the relevant date, to the conversion of the local currency into [U.S. dollars]³, such as withholding taxes, exchange taxes, transfer taxes or margins, however designated.
- 6) Audited financial statements of the Foreign Enterprise confirming that the funds that could not be converted or transferred were available for payment to the Investor or other parties, as the case may be.

² In some contracts, the inconvertibility coverage extends to local currency the Foreign Enterprise needs to convert for purposes of repaying loans or offshore suppliers. Proof that such funds were needed for such purposes should be provided.

³ In some contracts, the inconvertibility coverage extends to hard currencies other than U.S. dollars, such as Euros. Adjust as necessary.

- 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. Typically, this Certificate should be submitted once the claim application is complete.

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 insurance contract, but DFC 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 the DFC if you believe that any of the standard documentation would be inappropriate in connection with your specific claim.

CERTIFICATE FOR
[INCONVERTIBILITY]
[TRANSFER]
CLAIM

In connection with the Application for Compensation for **[Inconvertibility] [OR] [Transfer]** filed by _____ [Investor's Name] on _____ [Date of Claim Application], under Contract of Insurance No(s). _____ [Contract No(s).] dated _____ [Date of the Insurance Contract] (the "Contract") between _____ (the "Investor") and the United States International Development Finance Corporation ("DFC"), 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 _____ [Name of Entity into which Investment was Made] (the "Foreign Enterprise") and the project as described to the DFC and remained the beneficial owner of the Insured Investment.
- 2) Neither the Investor nor the Foreign Enterprise has entered into any arrangement or agreement with any foreign governing authority with respect to [the local currency to be converted] [OR] [the U.S. dollars to be transferred.]
- 3) The Investor or the Foreign Enterprise would have been able, in comparable circumstances, to effect [the conversion of the local currency into [U. S. dollars]⁴] [OR] [the transfer of [U.S. dollars]]⁵ under all of the laws, decrees, regulations, administrative determinations and practices and voluntary agreements which would have been applied by the government of the project country on the date the Contract was executed.
- 4) Any applicable taxes or transfer charges with respect to the [local currency sought to be converted] [OR] [[the U.S. dollars] sought to be transferred] have been or will be settled by the Investor or the Foreign Enterprise.
- 5) The Investor and the Foreign Enterprise have taken all reasonable steps to effect the [conversion of the local currency] [OR] [the transfer of the U.S. dollars].
- 6) The Investor has not assigned the Contract, or any of its rights thereunder, without the prior written consent of DFC.
- 7) The Investor is in compliance with all of its other duties under the Contract.

[Investor's Name]

By: _____

Name: _____

Title: _____

Date: _____, 20__

⁴ Adjust if another currency is covered.

⁵ Adjust, as necessary, if the claim is for inability to convert or inability to transfer.

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

- 1) A narrative description of the act or series of acts of the Foreign Governing Authority 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, an explanation as to why the act or series of acts complained of directly prevented the Investor from 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.

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 DFC 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 DFC if you believe that any of the standard documentation would be inappropriate in connection with your specific claim.

CERTIFICATE FOR
EXPROPRIATION
CLAIM

In connection with the Application for Compensation for **Expropriation** filed by _____ [Investor's Name] on _____ [Date of Claim Application], under Contract of Insurance No(s). _____ [Contract No(s).] dated _____ [Date of the Insurance Contract] (the "Contract") between _____ (the "Investor") and the United States International Development Finance Corporation ("DFC"), 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 _____ [Name of Entity into which Investment was made] (the "Foreign Enterprise") and the project as described to the DFC and remained the beneficial owner of the Insured Investment.
- 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 the DFC 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 [GAAP] [OR] [IFRS], and the Investor's application for compensation includes all information material to the DFC's decision whether the adjustments required by Article VI of the Contract should be made.

[Investor's Name]

By: _____

Name: _____

Title: _____

Date: _____, 20__

**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.
- 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.
- 8) A description of the Investor’s efforts to preserve property and pursue any 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.

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 insurance contract, but the DFC may require additional items depending on the facts and circumstances surrounding the individual case. Alternative documentation may be required under specialized forms of insurance contracts. Please consult with the DFC if you believe that any of the standard documentation would be inappropriate in connection with your specific claim.

CERTIFICATE FOR
POLITICAL VIOLENCE
CLAIM

In connection with the Application for Compensation on account of **Political Violence** filed by _____ [Investor's Name] on _____ [Date of Claim Application], under Contract of Insurance No(s). _____ [Contract No(s).] dated _____ [Date of the Insurance Contract] (the "Contract") between _____ (the "Investor") and the United States International Development Finance Corporation ("DFC"), 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 _____ [Name of Entity into which Investment was made] (the "Foreign Enterprise") and the project as described to DFC and emained the beneficial owner of the Insured Investment.

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 the DFC on account of the loss or has been relieved of any obligation by the loss.

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 [GAAP] [OR] [IFRS], and the Investor's application for compensation includes all information material to DFC's decision, and whether the adjustments required by Article VI of the Contract should be made.

[Investor's Name]

By: _____

Name: _____

Title: _____

Date: _____, 20__