



A detailed guide to OII

Introduction

ECGD's Overseas Investment Insurance (OII) scheme provides insurance for UK investors against the main political risks of expropriation, war, restrictions on remittances and breach of government undertakings.

Types of investment that can be covered

Investment techniques are changing, particularly with the growth in project financing, but set out below are some of the investment ECGD sees most often.

Equity

Contributions either in cash or in kind (for example plant, machinery, know-how, services), made to the overseas enterprise in return for shares, can be covered. In the case of a branch or a stand-alone project, cover can be given in respect of assets (other than stocks of consumables) that are owned by the investor, located in the host country and employed for the purposes of the relevant project. Sales of goods or services – including patents, royalties, know-how and management services – under contracts in return for payment, as distinct from shares, are outside the scope of the OII scheme, but may be eligible for cover under ECGD export credit facilities.

Loans and loan guarantees

Loans advanced to any overseas enterprise under a formal agreement can be covered. There is no requirement for a UK shareholding in the overseas enterprise or a related UK export. Both untied loans and loans tied to the export of goods or services from the UK or a third country may be covered. Where a loan is tied to UK exports, the terms of the OECD's Arrangement on Officially Supported Export Credits must be observed.

Cover for loan guarantees is particularly helpful for project sponsors. Cover may also be given against a call made on a guarantee given by a person carrying on business in the United Kingdom in respect of a loan made to an overseas enterprise in which the guarantor has an interest. However, that call must arise as a result of a non-payment under the relevant loan agreement that has been caused by one of the political risks covered by the OII scheme. This type of cover can be particularly helpful for project sponsors.



Risks insured

Expropriation

Expropriation includes:

- The nationalisation or confiscation of the investment or of the property of the overseas enterprise; and
- Indirect forms of expropriation by the host government with the intention of discriminating against the investor or the overseas enterprise that have the effect of depriving the investor of all (or most) of the investment (“creeping expropriation”).

The expropriatory action must normally last for at least one year before the fact of expropriation is established for the purpose of claims. In the case of an equity investment the occurrence of expropriation establishes the right to claim, while in the case of a loan investment the right to claim arises only if the expropriation results in default.

War

This includes losses due to war in which the host government is a participant, or due to revolution or insurrection in the host country. The investor is insured not only against damage to, or removal of, all or part of the tangible property of the overseas enterprise but also against the inability of the overseas enterprise to operate the project due to war. The test of such inability is whether the overseas enterprise has been physically unable to operate the project at all for a period of a year or has been unable to operate it at a profit for a period of three consecutive years. For a loan investment a default arising from war, revolution or insurrection must have occurred.

Restrictions on remittances

The restrictions on remittances risk covers the frustration for a period of six months of the investor’s attempts to convert into sterling or US dollars (or another currency acceptable to us)

- Earnings not retained in the business;
- The proceeds of any liquidation of the investment; and
- Interest on, and repayment of, loans.

The cover also applies if the conversion is permitted but only at a rate of exchange that discriminates against the investor. The insurance does not cover restrictions in force at the time the investment is made or when the ECGD insurance policy is issued, whichever is the later. Only sums that the investor attempts to convert within six months of receiving them are covered.



Breach of government undertakings

Cover may also be provided, on a case-by-case basis, in respect of breaches of undertaking given to the investor or the overseas enterprise by the host government (including, where appropriate, local or provincial government entities). Such undertakings must be legally enforceable in the host country and relate to the viability of the investment, and can include payment guarantees, promises to provide infrastructure in relation to the project and obligations to make or support termination payments. Claims, including those in respect of partial losses, will be, on the face of it, valid provided that the underlying reason for the host government's breach of an insured undertaking is political or administrative in nature and not commercial.

Eligible Investors

UK companies and their subsidiaries

All companies and persons carrying on business in the UK are in principle eligible for insurance, provided that the investment is identifiable as of UK origin in the host country. This also applies where the investment is made via an overseas subsidiary.

Use of intermediaries

Cover can be considered where an eligible UK investor channels an investment through a non-UK intermediary provided that the investor has a sufficient degree of control over that intermediary. In dealing with this method of making an investment, ECGD takes into consideration several factors, which include:

- Whether the intermediary is located in the host, or a third, country;
- Whether it is operational or otherwise; and
- Whether the investment is regarded as a UK investment by the host government.

Any cover given would reflect the extent of the UK investor's interest in the intermediary. ECGD'S premium charges would be adjusted, where appropriate, to take account of any multiple exposure to risks due to the method of making the investment for example double transfer risk.

Eligible enterprises

Direct investment

Cover is in principle available for eligible investments in any overseas enterprise (including a company, an unincorporated body, a partnership or a project) carrying on business in any country outside the UK, the Channel Islands and the Isle of Man, in which the investor has a direct interest (that is the investor controls it, or has a management or trading interest in it). For some investors, particularly those in the oil and gas sector, no company is established abroad. In such cases cover is given for the UK company's direct investment) in the form of cash equipment) into the project – thus, the project itself becomes the “enterprise”. Cover is not available for stock-market type investments.

Portfolio investment

Cover is also available where the investor does not have a proprietary interest in the enterprise (such as a UK bank making a loan to the enterprise as part of the bank's portfolio of investments) in order to enable the enterprise to develop. The investment offered for insurance should be equal to at least 10 per cent of the total equity (including, where applicable, loan investment) in the project, and be at least £50,000 in amount.

Loans to governments and state-owned enterprises

Loans to overseas governments or state-owned enterprises are eligible for OII cover but cover against the expropriation risk will be limited. For loans to overseas governments expropriation cover will not be available (because a government cannot expropriate its own property). In the case of state-owned entities expropriation cover would apply if the host government interfered with the enterprise in a discriminatory manner, but not as a result of any action the host government takes in its capacity as a shareholder of the enterprise.

Eligible investments

New investment

Cover can be considered in respect of any new investment, that is investment that finances a new enterprise or is an injection of genuinely new capital into an existing overseas enterprise.

Purchase of existing shares

OII cover may be available for the purchase of existing shares in an overseas enterprise if the surrounding circumstances are such that it can be said that the UK investor purchasing those shares is making an investment of resources in an enterprise carried on outside the UK.



Existing investment

In general, insurance is not normally available for an investor's existing investment in an enterprise, but it can be considered where a direct investor is simultaneously putting new resources (not retained earnings) into the enterprise in the form of equity. Cover for the existing investment will be given only if the value of the new resources invested is at least equal to the value of the existing investment.

Duration of the investment

Since the object of the scheme is to encourage lasting investment, the investor must intend to keep the capital in the overseas enterprise for at least three years. In the case of loans a repayment period of not less than three years must be provided for in the loan agreement. An investor is, of course, free to dispose of the investment within three years, but if this is done voluntarily ECGD can accept no liability for loss due to inability to repatriate the proceeds.

Investment financed by retained earnings

Where an eligible UK investor has a shareholding in an overseas enterprise that has accumulated retained earnings, cover can be considered where the investor wishes to reinvest those earnings provided the following conditions are met:

- The retained earnings must be employed in respect of an expansion or new development of the overseas enterprise;
- The investor must be able to satisfy ECGD that the earnings, in the form of dividends, would have been freely convertible into sterling, UK dollars or Euro (or other eligible currency) under the regulations in force in the hosts country; and
- The earnings must be formally capitalised or segregated in a manner satisfactory to ECGD, so that they are no longer available for distribution.

Amount of insurance

Percentage of cover

ECGD's maximum liability is 90 per cent (or such lower figure as is specified in the policy document) of the current insured amount (as described below).

Amount of equity investment

In the case of equity investment, insurance will normally be offered in respect of:

- The sterling or US dollar (or other eligible currency) amount of the initial contribution;
- Earnings retained in the enterprise up to 200 per cent of the investor's initial contribution of equity capital; and
- The remittance of distributed earnings.

Maximum insured amount (equity investment)

The policy will specify a maximum insured amount (MIA) that will constitute ECGD's maximum aggregate liability for the payment of claims. The investor may, if it wishes, confine the MIA to the amount of the initial investment. If, however, the investor wishes to cover retained earnings in the enterprise, it may opt for a higher MIA (up to a maximum of 300 per cent of the amount of the initial investment), provided this figure is acceptable to ECGD. Exceptionally, a higher figure may be considered on request. The investor can subsequently elect to have the MIA reduced, but once it has been reduced it cannot be increased. To avoid the risk of being under-insured it is often to an investor's advantage to select an MIA at, or near, the maximum available. There will normally be provision whereby the MIA is reduced by the amount by which remitted earnings exceed a quota (usually 200 per cent of the initial investment).

Current insured amount (equity investment)

Within the MIA, the investor is required to elect annually a current insured amount (CIA) which sets a ceiling on ECGD's liability for the following 12 months. THE CIA should be sufficient to cover what is termed in the policy as the "current investment value", that is the sterling, Euro or US dollar (or other eligible currency) value of the initial contribution at the time it was made plus retained earnings (or less losses if appropriate) together with expected earnings during the insurance year.

Maximum insured amount (loan investment)

In the case of loan investment, the MIA for the first period of the insurance (usually a year, but this could be six months if the loan has semi-annual repayments) would not normally exceed the principal of the loan plus the amount of the interest due in the period plus charges on the loan (making due allowance where appropriate for a fluctuating rate of interest).

Acceleration provision of a loan

In the case of loan investments the MIA will partly depend on whether or not there is a clause in the loan agreement giving the lender the right to accelerated repayment in the event of loan default. If there is such a provision, the maximum loss a lender can suffer at any one time will be the outstanding principal amount of the loan plus accrued interest, and this will determine the level of the MIA. However, if the lender expressly foregoes involving the acceleration provision the appropriate MIA will be the outstanding amount of the principal of the loan plus anticipated interest due over the life of the loan.

Current insured amount (loan investment)

The appropriate CIA for each period of cover will be the amount of interest payable and principal outstanding in that period under the terms of the loan agreement (including any acceleration provision).



Investments denominated in a foreign currency

ECGD's liability

For the major currencies, ECGD's liability is expressed in the relevant currency, but liability for investments in local currency is always expressed in sterling, Euro or US dollars (or another acceptable currency), in which case a basis will be required for effecting conversion for investment insurance purposes.

Duration of the insurance

The initial duration of cover is 15 years, during which period, and subject to the investor submitting annual renewal applications, ECGD is committed to maintain the cover on the original terms irrespective of any deterioration of the risk in the host country. After this 15 year period, the insurance policy may be extended at ECGD's option for further periods. However, if the policy has been allowed to lapse by the investor's failure to renew the policy, it will not usually be reinstated.

Premium

Premium is charged on the CIA at an annual rate depending on the host country concerned and any additional factors relating to the particular investment (details on specific country rates are available on request).

In addition, an annual commitment premium, at one quarter of the above rate, is charged on the difference, if any, between the CIA and MIA. Investors have the option of either a premium rate that is fixed for the life of the policy or a rate that may vary from year to year in line with ECGD's rate for the country. Investment insurance is, in certain circumstances, subject to Insurance Premium Tax.

Increases in cover after the issue of a policy

Capitalisation of retained earnings

Cover can usually be increased when retained earnings are capitalised through the issue of bonus shares or an equivalent method.

Revaluation of fixed assets

Investors may apply for an uplift in cover in line with asset revaluations, which are reflected in the books of the overseas enterprise, subject to payment of additional premium.

Claims

Total loss (equity investment)

In the case of a total loss of the investment as a result of the occurrence of any insured risk, ECGD's liability will be 90 per cent (or an agreed lower percentage) of the current investment value (or of the CIA, if less). Current investment value is defined in the policy but briefly means the original investment less any return of capital, plus any retained profits less any commercial losses.

Partial loss (equity investment)

Where there has been a loss that does not amount to a total loss of the investment the position as regards claims is as follows:

- Expropriation, the investor may choose to claim either:
 - In respect of the whole investment; or
 - In respect of the expropriated part only. (In this case, after payment of the claim, ECGD has the right to terminate the insurance on the unexpropriated part of the investment).
- War
 - The investor may claim on the amount of physical damage in proportion to the investor's share of the enterprise up to the current investment value, or in respect of the whole investment if the investment becomes inoperable, or operable only at a loss.
- Restrictions on remittances
 - The amount on which the investor may claim is the value, within the CIA, of the blocked currency, converted into the relevant insured currency at the exchange rate in force when the conversion was first attempted.

Loan investment

In the case of loan investment, claims in respect of expropriation and war are admitted only to the extent that default on the loan is occasioned by the occurrence of an insured risk. The rules in relation to restrictions on remittances are the same as for equity investment.

Reduction of the maximum insured amount

The MIA is reduced by the extent of the insured loss when claims are paid.



Payment of claims

Claims are payable as follows:

- Expropriation – 12 months after the onset of the expropriatory action.
- War – on proof of damage to physical assets, or 12 months after the overseas enterprise has become inoperable, or after the overseas enterprise has been unable to operate profitably for three successive years.
- Restrictions on remittances – six months after the first attempt to convert local currency. In addition, in the case of a loan, six months must have elapsed after the due date of the unpaid instalment.

Occurrence of loss

Notification of an expected loss

An insured investor is required to notify ECGD in writing of the occurrence of any event likely to lead to a claim immediately on becoming aware of such an occurrence. This early earning requirement is to enable ECGD to consider what action should be taken to avoid or minimise loss. After consulting the investor, ECGD can require the investor to take such action as ECGD judges appropriate in relation to a potential claim, including such legal and administrative action as may be open to the investor. At all times the investor must take all available steps to prevent or minimise loss and refrain from any action that would jeopardise the prospects of a settlement.

Notification of intention to claim

Once loss has occurred, the investor must notify ECGD of its intention to make a claim within three months of the occurrence of the insured cause of loss. ECGD will, on receipt of that notice, inform the investor of the procedure to be followed.

Compensation by host government

The investor should not enter into any compensation agreement with the host government in respect of an insured loss without prior consultation with ECGD.

Action after payment of a claim

On payment of a claim in respect of a loss arising from expropriation or war, ECGD may require the investor to assign or transfer to ECGD all the investor's rights and titles to the investment that is the subject of the claim and to cooperate with ECGD in the administration of any property so assigned. If ECGD does not wish to have these rights and titles, etc, assigned to it, the investor will be required to continue to administer its interest in the overseas enterprise and to take all steps necessary to effect recoveries in accordance with ECGD's instructions. Any costs incurred by the investor as a result of such requirements will be shared with ECGD in the proportions in which loss was borne. Special arrangements may apply in the case of partly paid-up shares.



Recoveries

All recoveries are shared between ECGD and the insured investor in the same relative proportions as those in which loss is borne.

Risk assessment and policy considerations

Treatment of projects

ECGD may refuse insurance completely or offer it subject to special conditions if the risks appear to ECGD to be unusually high. High risks may be associated with a particular field of investment activity, the individual circumstances of the project, an unfavourable investment climate in the host country or a combination of these factors.

UK considerations

In examining all applications for investment insurance ECGD must have regard to the national interest and UK government policy of the time. Projects that appear to conflict with these considerations may not be insured. The government encourages companies to adopt the OECD Guidelines for Multinational Enterprises (<http://www.csr.gov.uk/oecd1.htm>)

Nature of the project

In assessing risks, account is taken of the project's likely effect on the economy of the host country and the nature of the relationship, if any, established between the investor or the overseas enterprise carrying out the project and the host government.

Excluded risks

Circumstances may arise that preclude the provision of insurance entirely in certain countries or for certain industries or ECGD may not be able to cover all the risks.

Acceptability to the host country

General Position

Before insurance can be given ECGD must be satisfied that the investment is acceptable to the host government. Also, the investor will have a continuing responsibility to observe all local laws and regulations and to satisfy all requirements that the host government may lay down in relation the investment. ECGD will have no liability for expropriation provoked or instigated by the investor or the overseas enterprise or from the failure of either of them to comply with local laws and regulations. It is particularly important that the investment should be made and administered in accordance with the customs and sensitivities of the host country. Where joint ventures with nationals or the government of the host country are a form of investment particularly acceptable to that country, local participation will be a favourable factor in any decision on the terms and availability of cover.



Regulations and procedures

The regulations and procedures for establishing acceptability of inward investment vary widely from country to country and from time to time. ECGD's precise requirements in any particular case can be stated only when an application for insurance is being considered for underwriting. In any event, it is recommended that investors take professional advice to ensure they have met all the requirements of the host country.

Disputes

It is generally desirable, and particularly so in the case of large or sensitive projects, that the investor should seek agreement with the host government for resort to independent arbitration in the event of a dispute arising in relation to the investment. Where the investment project is to be the subject of an agreement between the investor and the host government, this should, if possible, include provision for such arbitration. Many governments throughout the world have signed and ratified the convention setting up the International Centre for the Settlement of Investment Disputes (ICSID), which is linked to the World Bank, and such governments may be willing to bind themselves to agree that any disputes arising from the investment should be referred to ICSID. A satisfactory arbitration agreement between the investor and the host government would be a favourable factor in ECGD's underwriting consideration.

Applying for cover under the OII scheme

Indications

Because the scheme is designed to encourage new investment, any proposed investment that an investor wishes to be covered by an OII policy **MUST** be registered with ECGD before the investor is irrevocably committed to proceeding with it. After receiving an application, ECGD will issue a non-binding indication of cover advising that the investment is prima facie eligible for consideration under the scheme, which enables the investor to commit to the investment without thereby rendering it ineligible for insurance on grounds of prior commitment. Such an indication does not commit ECGD to offer insurance on any particular terms or even at all.

How to apply

The investment insurance Proposal Form is in two parts:

- The Preliminary Proposal, which is required for the registration of a proposed investment and will enable ECGD to provide an indication of likely support, calls for general information only.
- The Main Proposal, which is required before the application can be processed and a decision on insurance made, requires full details of the proposed investment.

If, at the time of its initial application, the investor has completed the more detailed Main Proposal form there is no need to complete the Preliminary Proposal form.



Disclosure of material facts

In common with all other insurers, ECGD underwrites business on the basis of information supplied by the investor. Proposal forms need to be accurately completed, as any misrepresentation or failure to include relevant information might subsequently render the OII policy void. It remains the investor's responsibility to keep the information supplied up-to-date and to provide firm data where previously only estimates could be given.

Offers

Where, after consideration of the application, ECGD can agree to insure the investment, ECGD will issue to the investor a formal offer of cover.

Maintaining the insurance

Compliance with conditions

The investor should study the OII policy document carefully, since it imposes duties and obligations. Failure to comply with its conditions could result in loss of cover.

Information required

Apart from the duties and obligations that apply at all times, the investor is required before the commencement of each insurance period to elect the CIA and the MIA (where applicable) for the following 12 months. The investor must maintain annual financing and other records in respect of the investment, to be produced on request. Cover may be lost if ECGD does not receive prior notice of, and gives consent to, any variation in the terms of the investment or the operations of control of the overseas enterprise.

Next steps

Should you require any further information or require application forms, please telephone Overseas Investment Insurance Branch on: (+44) (0) 207512 7767; fax: (+44) (0) 20512 7264; or email: oii@ecgd.gsi.gov.uk.