

SECTION 9

CLAIMS AND RECOVERIES

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CHAPTER 1

SHORT TERM TRADE INSURANCE

- CLAIMS AND RECOVERIES

Introduction

Claims are part and parcel of insurer's business: if there were none, insurance protection would not be needed. Below is a brief description of objectives of claims processing and the basis and procedures for handling claims arising from short-term trade business.

Objectives in Claims Processing

The objectives in processing claims are:

- (a) to assist policyholders in pursuing overdue payment and minimising loss;
- (b) to give clear advice on the procedures for establishing valid claims;
- (c) to settle claims pragmatically and efficiently.

Buyer under Close Monitoring

A buyer's financial condition and payment ability are subject to change. There are, however, early symptoms of trouble. The common symptoms are:

- (a) slow or unsystematic payment by the buyer;
- (b) progressively late in producing financial statements by the buyer;
- (c) operating results of the buyer have deteriorated significantly;
- (d) request for longer credit terms for future shipments;
- (e) request for extension of due dates for payments;
- (f) request for change of payment terms for goods already shipped; etc.

Even at this stage, the insurer should review the status of the buyer and consider the buyer's requests. The purpose of identifying the buyer under close monitoring is to seek to prevent and to minimize loss.

Payment Difficulty Cases

Not all cases have early warning signs of the buyer in trouble. Very often, the buyer simply fails to pay debts incurred in the ordinary course of business when they fall due. If the policyholder is aware that a possible loss may arise, he should promptly give such information to the insurer, e.g. buyer files a bankruptcy petition. Otherwise, the policyholder is normally required to inform the insurer when the shipment is overdue for more than 2 months.

The insurer will work jointly with the policyholder to find out the reasons for non-payment and to consider the age of the debt, the conditions of the goods, the country of destination, the buyer's financial position and the economic situation of the buyer's country, etc. in order to arrive at the best course of action to be taken.

The sooner a payment difficulty case is reported, the better is the prospect of resolving the problem.

Loss Minimisation Actions

The policyholder should start to take whatever necessary action one would normally take when faced with a potential loss case, just as of he were not insured.

<u>Events of Loss</u>	<u>Loss Minimization Actions</u>
Insolvency	<ul style="list-style-type: none"> • register debts with receiver/liquidator • withhold shipments in transit • dispose of goods not accepted by the liquidator • follow-up dividend distribution arrangements
Default & Repudiation	<ul style="list-style-type: none"> • protest the bill • pursue payment from the buyer

	<ul style="list-style-type: none"> • appoint debt-collector / take legal actions • arrange storage, insurance and resale of goods (for repudiation only)
Transfer delay	<ul style="list-style-type: none"> • request the buyer to deposit in local currency • request the buyer to comply with all exchange formalities required

Claims Examination and Settlement

If the payment problem cannot be resolved, claims settlement should be made upon expiry of a waiting period in accordance with the terms of the cover. The Policyholder has to demonstrate that he has fulfilled the terms of the Policy precedent to the admission of liability by the insurer.

The determining factors on whether there is a case for claim payment are:

- (a) event of loss covered under the Policy
- (b) validity of debts established
- (c) Policyholder's compliance with major policy terms, e.g.
 - I existence of a valid credit limit
 - II shipments properly declared
 - III appropriate loss minimisation actions taken

Claims Supporting Documents

The supporting documents usually required are:

- (a) evidence of the contract of sale
- (b) unpaid invoices
- (c) bills of lading or equivalent evidence of shipment
- (d) purchase/collection/negotiation letters to bankers
- (e) bank advises of acceptance of bills of exchange, of non-payment and of protest

- (f) all correspondence relating to the loss minimisation actions

Export credit insurers normally take a pragmatic approach where the insurer is satisfied that his position under the Policy with regard to actions to pursue recoveries will not be jeopardized or where the non-compliance of any of the essential criteria of the policyholder will not increase the level of risk and the ultimate liability and that the policyholder has acted in good faith. However, intentional or fundamental breaches will not be excused.

Recoveries

The policyholder's obligation to minimise loss generally continues after the claim has been paid. The insurer may decide to rely on that obligation, instructing the policyholder as to the actions to be taken, monitoring progress and relying on the policyholder to repay the insurer any recoveries received.

Subrogation

In certain cases, however, having received a substantial reimbursement of the loss suffered by the non-payment, the policyholder has little real incentive to devote further resources to continue pursuing payment, preferring to spend those resources of time and expense on pursuing new business

Recognising this, the insurer may determine to take direct control of the recovery action on a day to day basis by requiring the policyholder to subrogate his rights. This will involve the insurer maintaining direct contact with buyers, receivers and liquidators, lawyers and debt-collectors. Where possible, the insurer may also arrange to receive recovery proceeds direct, distributing the proceeds between itself and the policyholder

Sharing of recoveries and expenses

The insurer and the policyholder should share in the respective proportion of the amount of claim paid to the amount of total loss in relation to

- (a) all sums recovered in relation to the claim case
- (b) any cost incurred for the purpose of loss minimization actions approved by the insurer. This will relieve the policyholders financial burden and lead to quicker action with better prospects or recovery

Written-off

A claim case should be written off as soon as practicable where the prospect of recovery is non-existent or further recovery action is not cost-effective. The basic objective is to concentrate time and efforts on those cases worthwhile pursuing.

Assignment of Rights under the Policy

The policyholder can arrange with his banker a written authorisation initiated by the policyholder and with the written consent of his banker, requiring the insurer to pay direct to the nominated bank all claims which may become payable under the Policy.

Under the arrangement, it does not in any way indicate admission of liability on the part of the insurer. It simply ensures that in the event a valid claim is admitted by the insurer, the claim will be paid by the insurer to the bank instead of to the policyholder.

Recovery Management

- (a) **Principle of Recovery**
 - Policyholder Obligation Continues after Claim Payment
 - Repay Insurer for any Recoveries Received
- (b) **Determining prospects of recovery**
 - Latest information on the buyer
 - Availability of repayment plan

- Information from insolvency estate
- Debt collector/lawyers Advice
- Country information Embassy, Berne Union, Trade Associations

(c) **Common Recovery Problems**

- Policyholder is inert
- Policyholder retains the recoveries
- No documents proving the amount recovered
- Interest payment

(d) **Ways to tackle**

- Frequent follow up with policyholders
- Establish direct contacts & follow up with banks, debt collectors, or even the buyer
- Take strong action to compel the policy-holder to act
- Check the integrity of the policyholder based on previous experience
- Check outstanding with banks, debt-collectors or buyer
- Pay personal visits