

## **CHAPTER III**

### **PRINCIPLES OF CLAIMS AND RECOVERIES**

This presentation on claims and recoveries will be made in the following parts:

- 1 Application of insurance principles
- 2 Ascertainment of Loss
- 3 Minimisation of Loss
- 4 Claims Processing
- 5 Claims Processing
- 6 Recoveries

#### 1 **APPLICATION OF INSURANCE PRINCIPLES (INCLUDING POLICY TERMS)**

The following has to be borne in mind when examining any claims:

##### 1.1 Principle of Uberimae Fidei

This is the general principle of utmost good faith. Has the exporter informed us of all material facts that is within his knowledge or has he misrepresented any facts or more important not disclosed or withheld information material to the risks eg. the buyer is a perpetual late payer but this experience was not disclosed to underwriters.

In ECICS this principle is part of the term of the Policy.

## 1.2 Allocation of Risk Share

Although for short-term business we issue credit limits for every buyer, exporters very often exceed such credit limits. How do we share the risks in claims payment and recoveries?

Firstly to determine the amounts outstanding for claims examination we have to apply the allocation of monies clause in the policy i.e. all payments received by the exporter has to be applied in chronological order of the invoice dates, not the due dates. Why?

An example to illustrate this:

There are 5 invoices which are as follows where the credit limit is \$300,000 on 30 days D/A.

<u>Invoice Value</u>	<u>Date of Invoice</u>	<u>Due Date</u>	<u>Date of Payment</u>
1. \$100,000	2 February 1997	2 March 1997	Outstanding
2. \$100,000	15 March 1997	15 April 1997	Outstanding
3. \$100,000	20 March 1997	20 April 1997	Outstanding
4. \$100,000	1 August 1997	30 August 1997	20 September 1997 (L/C 30 days)
5. \$100,000	15 August 1997	15 August 1997	17 August 1997 (L/C Sight)

The buyer was wound-up on 10 September 1997.

The outstandings on face value is \$300,000 and is covered by the credit limit. However, if we apply the allocation of monies clause (as above) and the automatic suspension of credit limit clause for overdues not paid which means the credit limit is

suspended when there are outstandings above 90 days which remain unpaid then we will get the following outcome:

Allocation of monies clause:

The payment for (4) and (5) will be applied to the outstandings of (1) and (2).

However, the balance amount outstanding is still \$300,000.

But applying the automatic suspension clause the credit limit will be suspended on 1 June 1997 when the 2 February 1997 invoice remain unpaid for more than 90 days.

Therefore, invoices (4) and (5) are not covered.

The outstanding balance, therefore, will be

Invoices Covered	less Payments Received
Invoices (1), (2) and (3)	less Payment for invoices (4) and (5)
\$300,000	less \$200,000 = \$100,000

Therefore, amount of claims for loss ascertainment is \$100,000.

The allocation of monies clause may seem to be harsh on the exporter but it is meant to protect the recovery prospects of the ECA. Otherwise when bill on D/A or open account terms remain unpaid, the exporter could switch to cash or letters of credit terms enabling him to continue supplying goods to the buyer who will then have no incentive or see no need, to pay bills which are outstanding under the credit terms. This undermines our recovery prospects. Further it might also lead to overtrading causing the buyer to go insolvent.

The apportioning of risk share usually is done by determining the amounts outstanding and what is insured say in the above example if all invoices were not paid then the risk share will be as follows:

Insured Debt 85% of \$300,00 = \$255,000

Uninsured Debt \$200,000 + 15% of \$300,000 = \$245,000

The risk share is almost 50 per cent each.

Risk share also determines how recoveries will be shared. In ECICS case we will share recoveries in the same proportion of risk share i.e. in the above example if \$Y is the net amount recovered our recovery will be \$Y

In some cases I know where the Policy term allows the ECA to take the first bite eg. if \$Y is the net amount recovered, the ECA's shares will be 85% of \$Y so long as \$Y does not exceed \$300,000. If \$Y exceeds \$300,000 then only will the exporter get a share for amounts in excess of the credit limit.

### 1.3 Proximate Cause of Loss

There can be instances when we have to ascertain the proximate cause of loss from the actual cause of loss in order to pay a claim under the Policy for a cause of loss which apparently is not covered by the Policy.

A good example is diversion of voyage which is not a head of loss covered under a standard export credit insurance policy. Say during the Gulf War when the Suez Canal was closed, ships were diverted via the Cape of Good Hope giving rise to delays which can result in rejection of goods because of very late delivery. The cause of loss apparently is the diversion of voyage but this was caused by the Gulf War which is a risk covered under the Policy. Hence the proximate cause of loss is War and the claim is payable under the Policy unless war risks is excluded.

### 1.4 Subrogation

This principle applies to recoveries. When an insurance company pays a claim he steps into the "shoes" of the exporter (or insured) to have the right to pursue recovery from the buyer. This right in general principle of insurance law is enshrined under the law of subrogation. It is also a standard policy term.

Hence, when an exporter recovers any monies from his buyer after a claims payment, the exporter has to refund 85% or 90%, as the case may be, to the ECA (less any recovery expenses, of course).

## 1.5 Assignment

Assignment is the right of one party, in our case the exporter, to assign (or transfer in law)

his rights under the sales contract, to another party, the ECA.

Assignment is another principle that can apply to recoveries. If our exporter is insolvent or he is ineffective in collecting the debt and we wish to take over debt recovery then we will get him to assign the right to the debt to us for recovery action.

We do not require debt assignments as a matter of course after every claims payment because:

1.5.1 there may be problems in some jurisdiction in enforcing rights as an assignee.

1.5.2 the exporter may have a larger risk share than the ECA i.e. the uninsured risk portion is higher than the credit limit.

1.5.3 the exporter is the contractual party and is better able to enforce the debt especially if issues are raised on say quality.

## 2 Ascertainment of Loss

This is the date when the ECA will examine and assess the merits of the claim and recommend payment or rejection, as the case may be.

The following are the usual date(s) of ascertainment of loss:

<u>Cause of Loss</u>	<u>Date of Ascertainment Loss</u>
Insolvency	Immediately on receipt of acknowledgement of Liquidator, Receiver or Judicial Manager.
Default	6 months after due (or extended) due date
Non-Acceptance	1 month after resale of goods
Transfer	4 months after deposit of local currency
Other Risks	4 months after date of occurrence
Payment of claims	should follow soon after the ascertainment of loss.

If there is a dispute the date for ascertainment of loss will be deferred until the dispute is resolved. Similarly if securities are required in the credit limit eg. a retention of title clause on the goods sold or third party guarantees, the exporter has to effect enforcement of the retention of title clause to repossess the goods and sell same or to enforce the guarantees and obtain judgment against the guarantors. Ascertainment of Loss will follow after such enforcement action.

### **3 Minimisation of Loss**

This is another general insurance principle which has been incorporated as a term of our Policies.

The exporter is expected to minimise and not enhance his loss. Therefore, immediately on non-payment by the buyer the exporter should take steps to minimise loss.

Loss minimisation is most effective when such action is taken as soon as possible, preferably within 3 months after due date. Such loss minimisation action is important to

us as we have the larger interest in the outstandings but the exporter may also want to recover his profit element which is usually in his risk share.

Usually the exporter has a obligation to notify the ECA of any outstandings that remain unpaid 60 days after the due date but the exporter should commence working together with his ECA as soon as possible to effect collection of debt. I do not say recovery as no claim has been paid yet but as we may have an interest in the collection action if claim is payable it is in our interest to ensure as early as possible that the exporter takes the kind of steps to effect collection as we will require. Hence, the need to work as partners.

In loss minimisation it is important for us to recognise the early symptoms of probable loss. In ECICS we require the exporters to notify us of their ageing experience. Every month ECICS prints and sends to all exporters a Bills Maturity Report (BMR) which sets out all the invoices outstanding (as per his declarations). The exporter is required to indicate those bills which are paid on the BMR and return same to us. Our claims officer will then analyze the returns and follow-up on bills which are not paid or partially paid and determine cause of action for collection.

Some early signs of a probable loss are as follows:

- 3.1 partial/erratic payments
- 3.2 request (continuous requests) for extensions of due dates
- 3.3 requests for changes of payment terms ie. longer and longer credit terms
- 3.4 lack of response to payment demands.
- 3.5 slowing down of payments with pattern of excuses
- 3.6 abrupt or frequent change of banks
- 3.7 (increasing) claims, suits filed by suppliers etc.

Exporters should be persuaded to work with its ECA as soon as any of the above occurs as the earlier the collection action starts the better the prospects for a full recovery.

The following are some actions for minimisation of loss and better debt recovery for different heads of loss:

#### Insolvency

- Withhold shipments in transit
- Register debts with Liquidator/Receiver/Judicial Manager
- Obtain acknowledgment of debt
- Follow-up on dividend distribution

#### Default

- Issue letter of demand
- Protest for non-acceptance/non payment
- Debt collection agencies/legal action

#### Non-Acceptance

- Protest for non-acceptance/payment
- Arrange storage and insurance
- Arrange resale or reship goods
- Seek assistance of debt collector/legal action
- Request buyer to make local currency deposit on due date or as soon as possible
- Request buyer to comply with all exchanges formalities.

#### Others (including transfer delays)

- Liaison with relevant Government authorities in debtors' country eg Central
- Bank, Chamber of Commerce, local ECA or Ministry of Finance.

#### 4 **Claims Processing or Claims Examination**



- 4.1 Claims Processing starts with the submission of Claims Form. From our experience at least 50% of claims or overdue notification do not result in claims. Therefore, until the exporter submits his claims form we do not process the overdue notification as a claim.

A specimen of our claims forms is attached. The claims form is a comprehensive documents setting out the details and data required.

The documents required for claims examination are as follows:

- 4.1.1 Sales contract and invoice
- 4.1.2 Bills of Lading
- 4.1.3 Bill of Exchange/promissory note
- 4.1.4 transport insurance document
- 4.1.5 packing list
- 4.1.6 surveyor's report
- 4.1.7 purchase orders
- 4.1.8 certificate of inspection
- 4.1.9 collection order/letter of credit
- 4.1.10 bank advice
- 4.1.11 protest notes
- 4.1.12 import licence (if applicable)
- 4.1.13 foreign exchange approval (if applicable)
- 4.1.14 bank confirmation of irrevocable deposit of local currency (for transfer claim)
- 4.1.15 all relevant correspondence

- 4.2 In claims examination we have to consider whether we also need:

- 4.2.1 communication with the buyer directly.

This is recommended for transactions of a dubious nature eg where there is a total failure under the policy ie. all exports declared have resulted in claims.

We experienced one such case where the transactions, were not genuine exports but mere indenting transactions with some "importers" who were licensed importers but were merely "lending" their licences to facilitate imports with no obligation to pay for the transactions. The licensed importers were paid a 3 per cent fee.

Direct communication is also useful when fraud is involved. In another case, all buyers contacted denied ever doing business with the exporter. The importers were well established companies whose names were used by the exporter to obtain credit limits. Thereafter, documents were drawn on such buyers for banks to discount bills of exchange which were accepted by the exporter's accomplices masquerading as the buyers' authorised signatories, in many instances forging signatures of the authorised signatories of the buyers.

#### 4.2.2 Visit to buyers

This may be justified to verify above and confirm buyers' version of the transactions.

Usually in a fraud case there is no substitute for visiting the buyers concerned.

#### 4.2.3 Application of Trade terms and terms of Payment

How will you deal with the following:

4.2.3.1 Documents against Payment on FOB terms

4.2.3.2 Documents against Payment on CIF terms

4.2.3.3 Documents against Acceptance on CIF terms

4.2.3.4 Open account on CIF terms

#### 4.2.4 Visit to Country of buyer

For political risk claims eg transfer debt moratorium, it is inevitable that at least a visit is made to the authorities in the buyer's country. Such a visit will include appointments with senior officials of the Central Bank, Ministry of Finance and any other relevant ministries or Statutory Boards involved in the outstanding debts.

### 5 **Claims Payment**

5.1 The percentage of indemnity amongst ECAs vary between 75% to 95%. The latter for political risks.

5.2 The amount of loss will usually be the indemnity percentage, say 85%, of the relevant credit limit or outstandings, whichever is lower.

6.3 Payment of claim is sometimes made after setting off outstanding premiums, which are in arrears

6.4 Conditional claims payment can also be made where an ECA is of the opinion that a dispute raised by the buyer is frivolous.

### 6 **Recoveries**

6.1 Recoveries as stated above is and can be an essential part of an ECs operations.

One cannot pay claims and forget about recoveries. In ECICS we are of the view that recoveries have to be pursued aggressively until the delinquent buyer is made

bankrupt or wound-up or it does not make economic sense to pursue the recoveries.

6.2 Recoveries action in most case would have been commenced before claims payment. As stated above it makes sense to take legal or debt collection action as soon as the default occurs viz within 60 days after due date.

6.3 Our recovery approach in ECICS is as follows:

6.3.1 Debt recovery action will be taken under the exporter's names (ie. as per subrogation principles)

6.3.2 Reliance is made on the Berne Union list of debt collectors and lawyers, and on credit agencies advice on prospects of the recovery.

6.3.3 Reliance is also made on International Credit Insurance Association or members of factoring chain where applicable.

6.3.4 We ensure that all communications with debt collectors or lawyers are made directly with us and the exporter. We also have the right to give lawyers or debt collectors instructions.

This should be the case as we are bearing the bulk of the recovery expenses especially after payment of claim.

Instructions are usually made by the exporter to channel all recoveries (net of expenses) to ECICS directly.

We will then apportion such recoveries (less expenses) in accordance with the risk share between us and the exporter.

- 6.3.5 In cases where the exporter has overtraded or outstandings exceeded the credit limit, recovery action will usually include such excess portion. Recoveries (and expenses) will then be shared as stated above, in accordance with the relevant risk shares.

In the event the exporter's excess portion might undermine the recoveries under the insured portion, ECICS has the right and which we will exercise, to direct the exporter to assign the insured portion to ECICS for direct recovery action. This could be done easily where bills of exchange or equivalent negotiable instruments are available.

- 6.3.6 For non-commercial or political causes of loss it is usual for ECA to take over all recovery action as such recovery action will involve direct negotiation with relevant authorities in the buyer's country and can result in Paris Club type recovery terms. Although Paris Club involves usually medium and long term debts, there are occasions when the debtor country will include all outstandings, short, medium and long term debts for rescheduling under the Paris Club terms.

We had such an experience for outstandings in Nigeria.

## 7 **Conclusion**

It can, therefore, be seen that claims and recoveries are important part of export credit insurance operations and in a service industry if we have an understanding claims philosophy and an effective recovery team, our consumers, the exporters, will also be given a competitive edge in the global market place. The former will help the exporters to ease and improve their cash-flows when their buyers default and the latter will enable them to have a comparatively high recovery ratio which usually means better profit margins as the exporters' risk retention is usually their profit element in the contract price.

**ECICS LTD**

*A member of The ECICS Group*

**CLAIMS FORM**

Note: The issue and completion of this Claims Form do not infer an admission of liability on the part of the Corporation.

Policy No: .....

Date of Issue:

Exporter's Name

Buyer's Name & Address

Loss Sustained (\$\$)

Date of event which caused loss or

Final Due Date(s) for Payment

We hereby declare that we have sustained this loss in connection with a contract with/exportation to the abovementioned buyer.

The loss was caused by (Tick where applicable)

- |    |   |  |   |
|----|---|--|---|
| 1. | INSOLVENCY OF BUYER                         |  | Buyer became insolvent as defined in paragraph .....of our Policy.                              |
| 2. | ACCOUNTS SIX MONTHS OVERDUE                 |  |   |
| 3. | FAILURE OF A BUYER TO ACCEPT GOODS EXPORTED |  | Through no breach of condition or warranty on our part or other causes within our control.      |
| 4. | EXCHANGE TRANSFER DELAY                     |  | The transfer of foreign exchange funds from .....to Singapore has been delayed by .....matters. |
| 5. | OTHER CAUSES OF LOSS                        |  | As specified under paragraph .....of the Policy.  |

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**PART I**

(a) We hold a Credit Limit approved by the Corporation under paragraph ..... of the Policy and details of which are:-

Amount S\$ .....Terms of Payment ..... Dated .....

Conditions:

- (b) We are operating under the terms of a discretionary limit of ..... allowed under schedule 1 to the Policy.
- (c) Our Contract Limit (where applicable) was set at S\$.....(amount)

**PART II**

The transaction(s) for which premium has been paid forming the subject of this claim is/are set out hereunder:-

DECLARED AS CONTRACTS (Contracts Policy Only)				DECLARED AS SHIPMENTS (Contracts and Shipments Policy)			
Actual Date Declared	Date Of Contract	Contract Value (S\$)	Premium Paid	Actual Date Declared	Date Of Shipment	Gross Invoice Value (S\$)	Premium Paid

Conversion rate used to convert Foreign Currency to Singapore Dollars for Declaration Purposes as based on the relevant published nominal interbank closing rate of exchange was .....

NOTE: If the transaction(s) subject of this claim was (were) only part of the amount(s) declared on the particular country and terms of payment in the declarations) referred to above, then the Exporter must show on Part VII the details of other contracts/shipments included in the total amount so declared.

If the claim or any part of it is in respect of goods not yet exported, the following declaration must be completed (see ..... of Comprehensive Policy (Contracts) only).

We enclose our cheque for S\$..... which we declare to be the premium due in respect of unexported contracts or portions thereof forming the subject of this claim. Details of the premium enclosed are:-

CONTRACT VALUE	RATE OF PREMIUM	PREMIUM PAYABLE



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**PART III**

We attach the following documents, where applicable, in support of the claim:-

- (a) The original or certified copy of evidence of insolvency/and official Receivers/Managers acknowledgement of debt
  - (b) Original or certified copies of relevant correspondence with the buyer and our agent.
  - (c) Original or certified copies of the contract(s) of sale and/or buyer's orders and our confirmation thereof.
  - (d) Certified copies of invoices.
  - (e) Certified copies of bills of lading, air-way bills, partial receipts or equivalent evidence of exportation.
  - (f) Originals of any unpaid bills of exchange, promissory notes (if held).
  - (g) Bank discount slips (if covering draft negotiated) and bank advices of dishonour or nonpayment. (If the Exporter was operating under a discretionary limit, the following additional documents are required)
  - (h) Certified statement of buyer's account to date, commencing two y-ears prior to the transactions forming the basis of the claim.
  - (i) Original information on which the creditworthiness of the buyer was assessed. (In case of Exchange Transfer Delay and Cancellation of Import Licence cover, the following additional documents are required)
  - (j) Evidence that the buyer
    - (i) held a valid Import Licence, if required, covering the subject shipment and/or
    - (ii) held, if required, a prior exchange permit or its equivalent necessary to obtain authority to transfer payment to Singapore.
- (In case of Exchange Transfer Delay, the following additional documents are required)
- (k) Evidence from the collection in .....stating.
    - (i) the due date of payment in respect of the shipment,

- (ii) that the buyer has made a irrevocable deposit in ..... Currency to the full equivalent of the gross invoice value.
- (l) If no irrevocable deposit has been made by the buyer as per (k) then evidence is required from the collection bank in that the buyer is precluded by the laws or regulations in from lodging such irrevocable deposit.

**PART IV**

The loss is calculated as follows:-

(1) **Goods Delivered**

Contract Value or Gross Invoice Value	..	..	..	..	S\$
<b>Less</b> (a) Amount already received..	..	..	..	..	S\$
(b) Sums or credits in our possession and available to the buyer or to us in the reduction of the debt	..	..	..	..	S\$
(c) Sums saved by the non-payment of agent's commission					S\$
(d) Any other sums recovered	..	..	..	..	S\$_____ S\$_____
					S\$_____

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(2) **Goods Not Delivered**

Contract Value or Gross Invoice Value	..	..	..	..	S\$
<b>Less</b> (a) Amount already received	..	..	..	..	S\$
(b) Amounts saved (if any) by non-fulfillment of contract	..	..	..	..	S\$
CIF charges ..	..	..	..	..	S\$
Agent's commission ..	..	..	..	..	S\$
Manufacturing costs, etc.	..	..	..	..	S\$
Packing costs	..	..	..	..	S\$
Bank charges	..	..	..	..	S\$
Interest	..	..	..	..	S\$
Any other expenses saved	..	..	..	..	S\$
(c) Any sums recovered by:					
Resale of goods	..	..	..	..	S\$
Return of goods to stock	..	..	..	..	S\$
Sale of materials pertaining to the contract	..	..	..	..	S\$_____ S\$_____
Plus Resale Expenses (List full details)	..	..	..	..	S\$_____

Loss goods not delivered

S\$\_\_\_\_\_

TOTAL LOSS ON GOODS DELIVERED AND/OR NOT DELIVERED

S\$\_\_\_\_\_

**PART V**

- (a) Name and address of your local agent (if any)  
.....  
.....
- (b) Description of goods  
.....
- (c) Where produced or manufactured  
.....
- (d) Present whereabouts of Bills of Exchange or Promissory Notes .....
- \* (e) Whether notice of dishonour (or letter of demand) made .....
- \* (f) Whether protested for non-payment on default .....
- (g) Dates on which outstanding items were first declared to the Corporation as overdue .....
- (h) Has there been any dispute or complaint or is there any dispute or complaint still outstanding and unsettled:-
  - (i) regarding the amount of the debt or any portion thereof? .....
  - (ii) regarding the goods supplied? .....
  - (iii) regarding the terms of the contract? .....
  - (iv) Regarding delivery dates? .....
  - (v) On any other ground? .....

NOTE: If answer to any part of this question is "Yes", please supply full details of the dispute or complaint, the action

(if any) taken by you to refute the buyer's allegations, and copies of all correspondence relating to the dispute or complaint.

\*If answers are "Yes", copies of relevant documents to be attached.

**PART VI - POLICYHOLDER'S DECLARATION**

**NOTE:** Discounting and similar operations through Banks and Accepting Houses including the endorsement of any Bills of Exchange and Promissory Notes relating to the contract will normally constitute any assignment or charge of the type referred to in Paragraph 7 of the Insurance Policy. The name of the persons to whom such an assignment or charge has or may have been made should be inserted in the space provided in (d) below. An incorrect declaration might have- serious consequences.

WE DECLARE THAT:

- (a) We have sustained a loss, particulars of which are as stated;
- (b) We have not entered into any contract of Insurance or indemnity in respect of the loss claimed and that except as already disclosed to you we hold no sums, credits, security or indemnity against this amount and that we have no claim:3 against our agents in respect of del credere risks assumed by them;
- (c) We have not assigned or charged any part of the benefits under our insurance policy to which the loss claimed relates or any right or interest acquired by virtue thereof and have not received any security in respect thereof;
- (d) We give below the name and address of each person in whose favour we have assigned or charged any part of the amount owing under each contract to which the loss claim relates or any right or interest acquired by virtue thereof or from whom any security in respect thereof has been received.  
.....  
.....
- (e) We are in a position to take all steps which the Insurer may require at any time to effect recoveries after payment of claim;
- (f) We understand that any payment which may be made to us or to a third party in settlement of this claim is made subject to the terms and conditions of the Insurance Policy and of the Proposal thereof;  
We accordingly claim payment of the amount shown in Part IV of this claim form. The draft in settlement should be made payable to  
.....

\*Signature .....

On behalf of .....

Dated .....

In the presence of .....

\*To be signed- in the case of partnership by a partner or in the case of incorporated companies by an authoi-ised officer stating the capacity in which he acts.

**Claims - Case Studies**

Topman Ltd. (Topman) reported to the insurer on 13 Dec. 1996 that a shipment for USD17,000 made on 8 Oct. 1996 to one of its buyers in the U.S.A. was overdue. Topman sold coffee decanters to the buyer since 1985. All the goods were shipped and consigned to the buyer. The detailed outstanding position was as follows

	Gross Invoice Value USD	HKD Equivalent	Shipment Date	Terms of Payment	Due Date
(a)	17,000	128,000	8 Oct 1996	OA 30 days	7 Nov 1996
(b)	14,000	106,000	31 Oct 1996	OA 60 days	30 Dec 1996
(c)	17,000	128,000	9 Nov 1996	OA 60 days	8 Jan 1997
(d)	38,000	294,000	9 Nov 1996	OA 60 days	18 Jan 1997
(e)	17,000	129,000	8 Dec 1996	OA 60 days	7 Feb 1997
	103,000	785,000			

The credit limit issued by the insurer was for HKD600,000 OA 60 days.

1. On 24 Dec. 1996, the buyer filed a petition for reorganisation under Chapter 11 of the U.S. Bankruptcy code.
2. On 3 Jan. 1997, the buyer proposed to Topman that if Topman agreed to continue to trade on credit terms, it would be paid a deposit of 100cents on the dollar for all undisputed claims for goods delivered before 25 Dec. 1996. Topman approached the insurer for approval whether or not it should accede to the buyer's request. Topman indicated that it would agree to the buyer's request for continued supply on credit terms only if the insurer agreed to provide the cover.
3. On 22 Jan. 1997, the Bankruptcy Court provided Topman a Proof of Claim Form with a pre-printed scheduled amount of USD48,000. Topman immediately notified Bankruptcy

Court that the correct amount of outstanding debt should be USD103,000. Meanwhile, Topman asked the insurer to settle its claim on the outstanding shipments under the insolvency event of loss.

### **Questions for discussion**

1. Please consider whether or not the insurer should agree to Topman's request for cover on new shipments on credit terms to the buyer in return for the settlement of the old debt. Please state your reasons.
2. What measures would the insurer take in order to demonstrate that the insured has properly executed the sales contracts by delivering the goods to the buyer?
3. What would the insurer require from Topman before a claim payment on the outstanding shipments could be considered?

### **Case Study 2**

#### **Claims**

Toy Company Limited reported to HKECIC on 10 August 1997 that one of their buyers in the United States did not settle the following shipment of plastic toys:

Gross Invoice Value	Date of Shipment	Terms of Payment	Due Date
USD 120,000	10 April 1997	DA 30	12 June 1997

The credit limit approved by HKECIC was USD100,000 DA 30 days.

From documents submitted by the policyholder, no specific reasons for non-payment could be found neither was there evidence showing any disputes between the buyer and the policyholder. Hence, a debt-collector was recommended to Toy Company Limited to pursue payment from the buyer.

From copies of correspondence exchanged between Toy Company Ltd. and the debt collector, it was noticed that the total amount of debt that the debt collector was pursuing was USD200,000 instead of USD120,000. The Claims Officer therefore, asked Toy Company Ltd. to explain why a smaller amount was declared. Toy Company explained in writing that there was only one shipment for USD120,000 and the amount of USD200,000 was wrongly stated in the letter to the debt-collector.

Upon checking with the debt collector, HKECIC was advised that, in fact, two shipments amounting to USD200,000 were outstanding and the other shipment for USD80,000 was effected on 23 May 1997 which was not declared to HKECIC.

Further explanation was sought from Toy Company who then admitted that the shipment for USD80,000 was an omission and that it was a mistake made by one of their clerks who had already resigned.

To have a better understanding of the case, a meeting among the managing director of Toy Company and HKECIC was held. The managing director then alleged that:

- a) they were not aware of the whole insurable turnover requirement;
- b) they assumed that any amount in excess of the approved credit limit on the buyer should be for their own account and should not be declared;

In going through the file, it was noticed that:

- a) Toy company was a leading firm in the trade of toys and the turnover in 1996 was over USD20 million but over 90% of which was local sales,
- b) no declaration of exports have been made to HKECIC since May 1997,
- c) whilst it is not known whether Toy Company had declared all insurable shipments as they should, there is no record showing previous omissions.

### **QUESTIONS FOR DISCUSSION**

**Question 1**

As a claims officer, please advise whether you accept the reasons given by Toy Company Ltd. for the omission and why?

**Question 2**

Will you accept the liability for the shipment of USD120,000 declared and ascertain Toy Company Ltd's loss? (Assuming that other terms and conditions have been complied with.) Please state your reasons.

**Question 3**

What would you require from Toy Company to satisfy yourself that there is no other omission ?



**Recoveries**

**Policyholder: Hong Kong Company Limited**  
**Buyer: Toys Corporation, USA**

**Background**

1. A credit limit of \$1,800,000 DA120 days was issued on the buyer to the policyholder (PH).
2. PH joined us in 1982 and has more than 20 years trading experience with the buyer. The buyer was the major buyer under the Policy.
3. In early January 1997, PH reported that 25 DA120 days shipments totalling \$5,300,000 remained unpaid.
4. PH placed the case to a debt-collector in March 1997. Claims payment of \$1,620,000 (90 % of credit limit) was made in early April 1997.
5. After claim payment, PH received a letter from the buyer (attached) requesting the PH's support.

**Questions for discussion**

- Q1. Should PH sign the letter? What relevant points should be addressed
- Q2. Please consider the course of actions to be taken to pursue recovery of the outstanding debt.

**Letter received from the buyer**

10 April 1997

Dear Frank,

We are negotiating with a new bank and it will help our negotiation if you will accept to put the contents of the enclosed letter on Hong Kong Company Limited letterhead to prove that you are in agreement with our decision rest assured we are only doing this as a technicality and whatever the name of the new corporation is to both Peter and John, guarantee your account to the last dollar plus interest.

Now let me explain to you why we are doing this. Basically, we are heavily over inventoried in some items which I feel will bring the closing figures of 1996 to a point where inventory might be considered by our bankers too high in relationship to the volume of Toys Corporation. Therefore, we are being advised by our bank to move some inventory to a new corporation and have the new corporation hold the debt to our overseas supplier which in this respect are none about you.

This will enable Toys Corporation to show a much lower inventory which will enable us to secure financing and hopefully in June 1997, we will be able to bring this nightmare to a close and restore your confidence in us and at the same time restore the confidence of your bankers.

Sincerely,  
(signed)  
Peter Green

**Promissory Note**

We attest that both Peter Green and John Green are responsible as officers of Toys Corporation and corporation they spin off to the debt due to Hong Kong Company Limited.

(signed)

Peter Green

(signed)

John Green

**Case Study - Recovery**

To Whom It May Concern:

I understand that the officers of Toys Corporation, John Green and Peter Green in their discussion with their accountants are now contemplating to spin off a new corporation which will be responsible for the debt to us.

This debt that the new corporation will assume will be more than covered by inventory passed on from Toys Corporation. Whatever decision Toys Corporation undertake, we fully support and we are in full agreement with.

We know Peter the Greens for a very long time and our trust in them is absolute.

Frank Chan

**Recoveries**

Garment Company Limited made the following shipment of ladies garments to the buyer AAA Co. in the United Kingdom:

Gross Invoice value	Date of shipment	Terms of payment	Due Date
USD500,000	10 Sept 1996	DA90	6 Jan 1997

The bill of exchange was drawn on the buyer, AAA Co. (a sole proprietor) and was duly accepted. However, the bill of exchange was dishonoured on the due date without any reason for default.

Garment Company had obtained a personal unconditional guarantee from the Managing Director, Mr. A of AAA Co. for USD100,000 as well as a Corporate guarantee from AAA Holdings Ltd. in the United Kingdom, which was a holding company purportedly owned by Mr. A.

The bill of exchange was protested and a claim was paid to Garment Company Ltd.

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Please discuss the course of actions to be taken to pursue recovery of the outstanding debt.