In the wake of Russia recently setting new rules for foreign creditors’ debt repayment, dividing foreign creditors in terms of whether or not they are based in a country that’s sanctioned Russia (the “Decree”), creditors having exposure to Russian entities have started reviewing their repayment options. Some of them may feel fortunate holding export credit insurance covering their political and/or commercial risk of funding Russia. For those creditors, the time has come to test the value of their export credit insurance.

**Blocked Currency Transfers as Insured Events under Polish Export Credit Insurance**

In Poland, export credit insurance is provided by the Polish export credit agency
(ECA) – KUKE S.A. – and such insurance is indirectly backed by the Polish state. Legally, it is a variation of a typical property insurance. Therefore, claim processing with the Polish export credit agency is similar to traditional property insurance claim processing, except the former’s legal framework.

Depending on the terms agreed in the export credit insurance policy, inability to transfer currency to Poland may be considered an insured event under the export credit insurance provided by Polish ECA. To obtain the insurance proceeds, the insured party must file a claim, prove the insured event, and demonstrate a causal link between such event and the suffered damage, as well as evidence that the damage is a normal, direct and exclusive consequence of such insured event. Past experience shows that a borrower’s delayed or defaulted credit repayment in times of payment restrictions in its home country is often the harbinger of such borrower’s insolvency, which is a separate insured event under the Polish export credit insurance.

**Damages Covered by Polish Export Credit Insurance**

The scope of the damages insured under the Polish export credit insurance is capped at the insured amount provided for in the relevant policy covering principal repayments, interest on the principal amount and agreed fees provided for in the insurance policy. Default and other interest, deductible, other fees, costs of currency fluctuations and lost profits are not covered under the Polish export credit insurance.

The Polish ECA is also not liable for any damages resulting from:

1. any action or inaction of the insured or the person acting on its behalf;
2. provisions limiting the rights of the insured resulting from the agreement covered by the export credit insurance, the export contract or any other guarantee/suretyship or other collateral document,
3. any further agreement between the insured and the debtor concluded, without the Polish ECA’s consent, after the agreement covered by insurance has entered into force, which empowers both parties to suspend or postpone the receivables payment.

The latter is very important if the parties to export credit agreements would consider signing any waiver, consent or standstill agreements to suspend or postpone the payments. Such agreements must be consulted with and approved by the ECA.

**Claim processing**

Claim processing with the Polish ECA is divided into three main stages. First, between the insured event and the relevant damage commencement date provided for in the Polish export credit insurance, the creditor must notify the Polish ECA on the amount of the threatening damage. Next, the creditor files the claim notification with all the documents substantiating the damage and formalities
required by the Polish export credit insurance regulations. If all formal requirements are met, the Polish ECA will pay out the damages. Importantly, the Polish ECA has the right to pay out the damages in accordance with the repayment schedule agreed between the parties to the relevant export credit agreement irrespective of any termination and acceleration of payments by the creditor. At its discretion, the Polish ECA may decide to pay the damages in full earlier. In that case, it will deduct from the damages amount any interest on the principal which will not have become due. In principle, the Polish ECA is obliged to pay the damages within 30 days from receipt of the claim application with required documents substantiating the damage, but not earlier than 30 days from the relevant damage commencement date. However, in case of any dispute between the parties as to the relevant export credit agreement, the Polish ECA may suspend the payments until such dispute has been finally resolved.

**Obligations after Damages have been Paid**

Once the Polish ECA has paid the damages, its legal relation with the insured is not yet concluded. The insured must cooperate with the Polish ECA and procure that all security under the export credit agreement is transferred to the ECA. In case of partial payments, the insured is obliged to enforce against the debtor and cooperate with the ECA. Understanding the issues of export credit insurance and properly preparing claim processing are the cornerstone of good working cooperation with the ECA.

© Copyright 2022 Squire Patton Boggs (US) LLP

National Law Review, Volume XII, Number 87

**Source URL:** [https://www.natlawreview.com/article/trial-fire-polish-export-credit-insurance](https://www.natlawreview.com/article/trial-fire-polish-export-credit-insurance)