

Pursuing Political Risk Insurance Coverage In 2017

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PRACTICES Insurance Recovery

If 2016 is memorable as a year of immense political upheaval, 2017 may offer more of the same. Already, in the first months of 2017, significant domestic political events have transpired, with the promise of more to come. These are events of significant consequence to specific companies, discrete industries and America's global trading partners. Domestically, for example, we can anticipate changes in regulations governing private health insurance and uncertainty regarding bi- and multi-lateral trade agreements. Overseas, continued anxiety exists in Europe over the ongoing Syrian refugee crisis and "Brexit." France, Germany, the Netherlands and Italy will all hold general elections in 2017, with important implications for the Euro and the economic outlook for the EU and the global economy.¹

There are ways to manage even the extreme financial risk created by the political turmoil of late. Well-established tools like lobbying, contractual risk transfer and insurance may to one degree or another mitigate the potential economic loss to which corporations are exposed both domestically and globally. Historically, companies operating in the relative instability of regimes in Latin America, Africa or the Middle East have relied upon political risk insurance to protect investments overseas. While many risk managers and other insurance professionals may associate political risk insurance with third-world despots and banana republics, for many companies, political risk insurance may become increasingly necessary to navigate risk in the current domestic political climate.

What Is Political Risk Insurance?

Political risk insurance policies address a variety of discrete risks but can generally be characterized as protecting corporations against loss resulting from adverse conduct by state actors and, in some cases, politically motivated conduct by third-parties. More specifically, political risk insurance may provide coverage in the event of, among other things, (1) **contract frustration or cancellation**: government action that prevents performance of a private or public contract or results in cancellation of such contract; (2) **currency transfer restrictions**: government action precluding the convertibility or repatriation of currency; (3) **confiscation, expropriation or nationalization**: government action to take ownership, control, use or possession of private property, including "creeping" expropriation; (4) **selective discrimination**: change in foreign law or regulation adversely affecting a policyholder's operations in a foreign jurisdiction, which is not similarly applied or adversely affecting comparable domestic entities; and (5) **political violence**: physical loss or damage to property caused by political violence, including war, riots and civil disturbance.

The individual policy terms outlining these coverages may vary substantially from one form, transaction or insurer to another. Coverage may be excluded for loss arising from insolvency, non-compliance with laws and regulations, or risks traditionally covered by terrorism, crime/fidelity or commercial property policies, among other exclusions. There may also be rigorous policy conditions, particularly relating to reporting claims and events, waiting periods, and loss mitigation and valuation.

How Can Political Risk Insurance Benefit Corporate Policyholders In 2017?

Companies that regularly enter into contracts with the federal government may hope to insure against cancellation or frustration. Events over the past several months have had direct impact on public and private contracts involving a range of issues from aviation manufacturing to environmental compliance and pipeline construction. To the extent that specific contracts are subject to cancellation or renegotiation by executive or legislative action, political risk insurance may provide some protection to private corporate counterparties.

Likewise, political risk insurance may afford coverage for the economic consequences of legislation or executive orders selectively targeting specific companies or industries for punitive action. Changes in domestic policy may subject individual businesses or groups of companies to taxes or tariffs based on corporate practices. Again, to the extent that individual companies or discrete industries are the focus of punitive government action, political risk insurance may offer some protection or recovery.

What Should Companies Consider When Purchasing Political Risk Insurance?

Despite the general political uncertainty both domestically and abroad, the market for political risk insurance is relatively robust. Capacity has increased steadily over the past decade, and with that added capacity, pricing is historically competitive. Although, policyholders must be diligent in securing the best terms from among the variety of offerings in the marketplace and in making the disclosures necessary during the underwriting process. Particularly with respect to insurers in the London market and contracts made subject to UK law, while UK's 2015 Insurance Act has generally limited insurers' remedies for misrepresentations or omissions made during placement of coverage after August 2016, care should be taken to ensure that fair presentation is made and policy wordings do not contract out of the Act's protections.

Corporate policyholders are experiencing an extended season of political uncertainty. Whereas that volatility has historically been limited to overseas investments, recent events suggest that even the domestic political environment will yield risks for which political risk insurance provides an appropriate solution.

If you have questions about political risk insurance or corporation insurance claims in general, please contact one of the Haynes Boone Insurance Coverage Practice Group partners listed below.

¹ Angela Bouzanis, [4 Key European Elections That Will Impact the Economy in 2017](#), *Focus Economics* (Jan. 18, 2017)