

SECTION 11

OVERSEAS INVESTMENT INSURANCE

**CHAPTER I OVERSEAS INVESTMENT INSURANCE
 THE JAPANESE MODEL**

**CHAPTER II OVERSEAS INVESTMENT INSURANCE
 THE KOREAN MODEL**

CHAPTER I

OVERSEAS INVESTMENT INSURANCE - THE JAPANESE MODEL

I. Summary

Overseas Investment Insurance is insurance covering Japanese companies which have made overseas investments, and covers losses in regard to their rights as shareholders or creditors. Such losses are caused by political risk and include the inability to continue business activities due to expropriation, war, or civil war or to remit dividends etc. or make repayments because foreign exchange transactions have been restricted by, the government of a host country, and losses caused by commercial risk, including bankruptcy of the companies in which the investments are made.

This insurance covers losses caused by the political risk and commercial risk involved in overseas investments so that Japanese companies need not be concerned when making, such investments. Moreover, such insurance contributes largely to international economic cooperation.

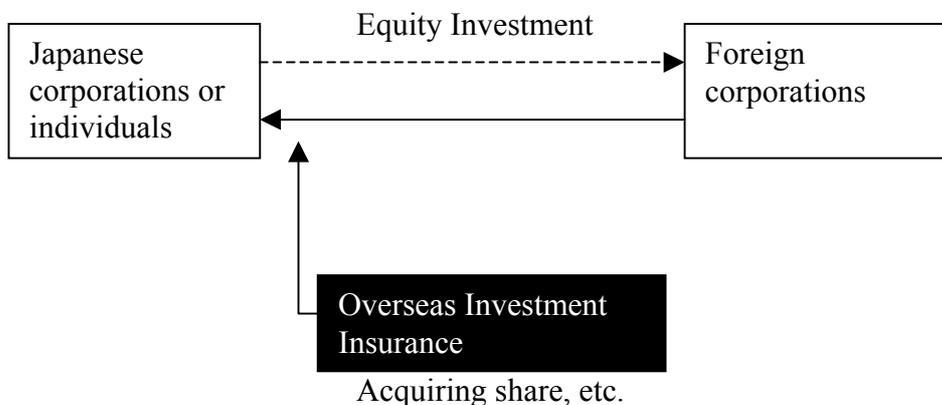
Name	Type of Investment	Insurance Policy	Coverage
Investment type 1 (share, etc.)	Obtaining shares in foreign corporations (including the securitization of debt and securities investments)	Overseas Investment (Share, etc.) Insurance Policy	Political risk 95% Commercial risk 40%
Investment type 2 (Claims, etc.)	Long-term loans to foreign corporations (substantially managed by the Japanese investor) as funds for business activities	Overseas Investment (Claims, etc.) Insurance Policy	Political risk 95% Commercial risk 40%
	Assumption of surety obligations regarding the above	Overseas Investment (Surety Obligations) Insurance Policy	Political risk 95% Commercial risk 40%
Investment type 3 (Real estate, etc.)	Acquiring real estate, plant and equipment, etc., for overseas business activities	Overseas Investment (Real estate, etc.) Insurance Policy	95%

2. Subject & Insurance Coverage

Overseas Investment Insurance is classified as follows by the type of investment:

- **Overseas Investment Insurance on Equity Investments**

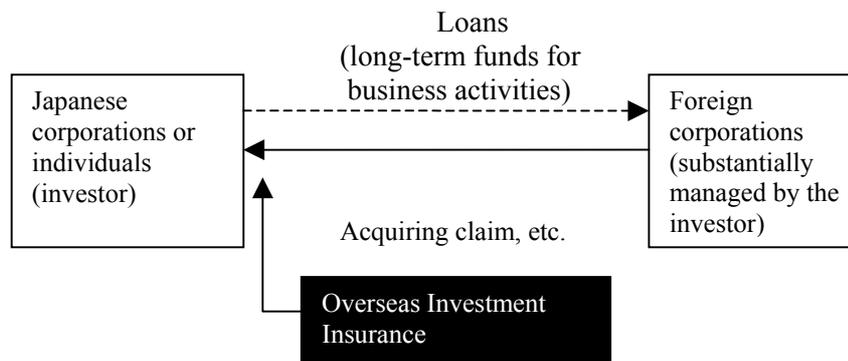
This insurance covers risks assumed by corporations when establishing overseas subsidiaries, establishing overseas joint-venture companies with foreign partners, or making investments in existing foreign companies. (Investment type 1 share, etc.)



Overseas Investment Insurance for Loans

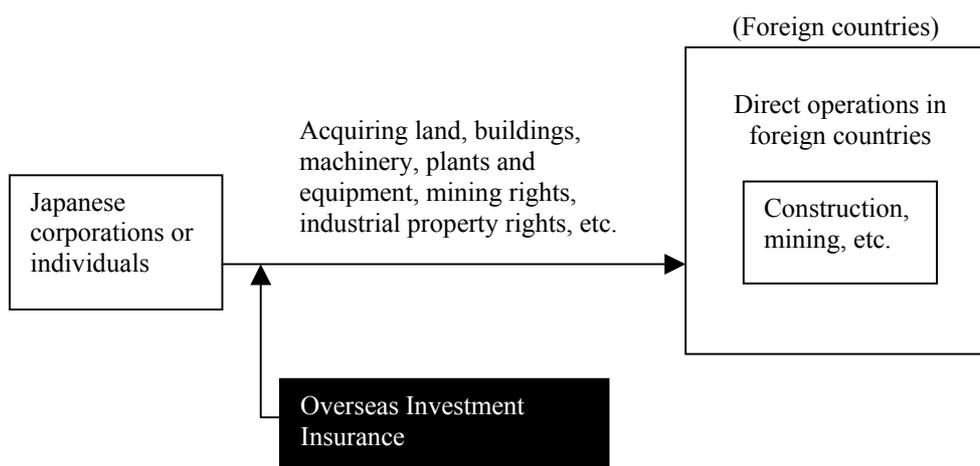
This insurance covers risks related to long-term loans of funds required for business activities by foreign corporations (which are substantially managed by the Japanese investor).

(Investment type 2 - Claims, etc.)



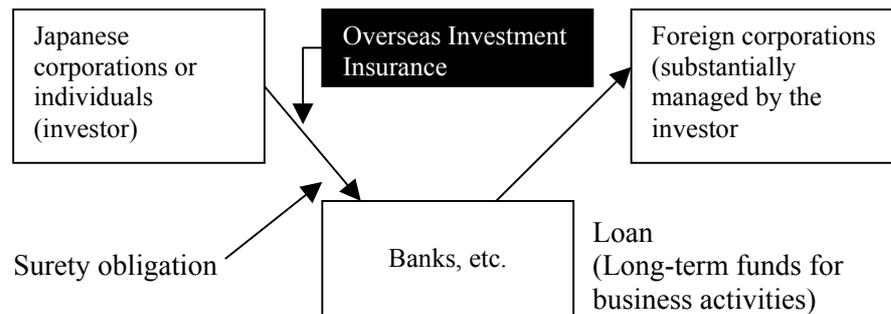
Overseas Investment Insurance for Real Estate Rights, etc.

This insurance covers risks assumed by Japanese corporations which engage directly in business in a foreign country in connection with real estate rights, mining rights, and other rights to plant and equipment transported directly to a foreign country in order to conduct such business. (Investment type .3 - Real estate, etc.)



▪ **Overseas Investment Insurance for Surety Obligations**

This insurance covers risks assumed by Japanese corporations in connection with surety obligations for long-term loans to foreign corporations (which are substantially managed by the Japanese investor). (Surety obligations for claims, etc.)



The definition of "substantially managed" by a Japanese corporation is as follows: The phrase "corporation whose management is substantially controlled by a Japanese company or by a Japanese national through the ownership of shares or other methods" in Article 2, paragraph 16 of the Trade and Investment Insurance Law, refers to any of the following cases:

- (1) A Japanese corporation or a Japanese national who has made an overseas investment holds more than 50 percent of the shares or other interests with voting rights in such foreign corporation.
- (2) More than 50 percent of the executives in a foreign corporation (limited to executives who hold voting rights at a meeting of the board of directors; the same shall apply hereinafter) are executives or employees of a Japanese corporation or are Japanese nationals.
- (3) A Japanese corporation or a Japanese national holds no less than 25 percent but no more than 50 percent of the shares or other interests with voting rights in such foreign corporation and comes under any of the following:
 - a) The Japanese corporation or Japanese national involved is the largest shareholder in such foreign corporation
 - b) More than 25 percent of the executives in such foreign corporation are executives or employees of a Japanese corporation or are Japanese nationals.

- (4) If the Minister of International Trade and Industry considers that a Japanese corporation or a Japanese national substantially controls the management of such foreign corporation

3. Underwriting Requirements for Insurance

The requirements for underwriting insurance for overseas investments stated in 2. above are as follows:

- (1) Such investments must contribute to the sound development of overseas transactions by Japanese corporations.
- (2) Any such investment must be a new transaction.
(including transactions following the expiry of the insurance period for Overseas Investment Insurance)
- (3) The political and economic conditions in the host country involved pose no particular problems.
- (4) Protective measures in regard to foreign capital in the host country involved have been fully established.
- (5) Such investments have been permitted by the host country involved.
- (6) If surety obligations are assumed, whether or not it can be confirmed by a guarantee contract or other similar documents that a guarantee has been appended to or included in the original obligations, and if the guarantor performs such surety obligations, the acquisition of indemnity rights has been clearly stipulated in the guarantee contract or other similar documents.

4. Risks to be Covered

The risks to be covered by Overseas Investment Insurance are: political risk; (expropriation; war; failure to make remittances) and commercial risk (bankruptcy).

(1) **Political Risk**

▪ **Expropriation risk** (Investment type 1 - 3)

- 1) The expropriation, by a foreign government, etc. of the principal, etc., of an investment (rights relating to the principal of equity, etc. or claims, etc. or right to claim dividends from stock, etc. or right to claim interest from claims, etc.) or rights, etc. related to real estate.
- 2) Inability to continue business due to damages incurred by the party in which the insured investment was made (invested company) caused by the interference of a foreign government, etc. in the rights related to real estate, plants and equipment, raw materials and other goods, mining or industrial property rights, or other rights or interests, which caused the inability to conduct the business involved.
- 3) The performance of surety obligation, due to the non-performance by the principal obligors of their obligations as a result of losses to the said obligor's properties for the above reasons (Surety obligations for claims, etc.)

▪ **War Risk** (Investment type 1-3)

- (1) If any of the following occur in relation to the insured company; (a) Inability to continue business activities, (b) bankruptcy, etc., (c) suspension, etc. of transactions with banks, and (d) suspension of business for over six months caused by war, revolution, civil war, riot or other forms of civil disturbance
- (2) The performance of surety obligations due to the non-performance by the principal obligors of their obligations due to any of the above reasons (a)-(d) as the result of losses to the said obligor's property, caused by war, etc.
(surety obligation for claims etc.)
- (3) Insured's inability to exercise their rights, etc. related to real estate, involved in the business activities due to the interference with such rights caused by war, etc.

▪ **Remittance Risk** (Investment type 1-3)

Inability for over two months to remit to Japan any transfer proceeds, dividends from share, repayment of loan principal and interest, sales proceeds from real estate, and any amount obtained from the main obligor by executing surety obligations because of the restrictions on foreign exchange transactions in a foreign country.

(2) **Commercial Risk**

Bankruptcy due to depressed business conditions of the invested company or other similar reason.

The term "bankruptcy" in this article must satisfy all three following conditions:

- 1) The liabilities of the invested company are in excess of their net worth.
- 2) Dissolution of the invested company.
- 3) Involvement by the judicial authorities in the host country.

5. Insurance Period

The following are insurance periods according to the risks to be covered:

- (1) For political risk, it should in principle, be from 3 to 15 years.
- (2) For commercial risk, it should in principle, be from 3 to 10 years.

In exceptional cases, if a considerable period of time is required before the party to the insured investment will start an operation, such as the construction of factories, the following period designated by the Minister of International Trade and Industry can be added to the above periods:

- (1) For political risk, the actual period required to start overall operations.
- (2) For commercial risk, a period not exceeding the period until the start of operations.

6. Insured Amount

The insured amount which refers to the upper limit of insurance claims to be paid when losses occur, is determined to be no more than the amount obtained by multiplying the "total amount for acquisition" for each risk covered by the designated coverage rate.

The coverage rates are as follows:

(1) Political risk in Investment types 1, 2, and 3	95%
(2) Political risk in surety obligations for Investment type 2	95%
(3) Commercial risk in Investment types 1 and 2 and surety obligations for Investment type 2	40%

7. Insurance Claims Payable

The insurance claims to be paid should be calculated by multiplying the loss amount by the coverage rate and should not exceed the insured amount. (Actual loss coverage system)

The following formulae are used for the calculation of insurance claims:

(1) For political risk

▪ Expropriation and war risk

$$1) \left(\begin{array}{l} \text{Amount appraised} \\ \text{immediately before the} \\ \text{insured risks occur or} \\ \text{the total amount for} \\ \text{acquisition, whichever} \\ \text{is smaller} \end{array} \right) - \left(\begin{array}{l} \text{Appraised amount} \\ \text{immediately after} \\ \text{the insured risks} \\ \text{occur} \end{array} \right) - \left(\begin{array}{l} \text{Amount} \\ \text{recovered,} \\ \text{etc.} \end{array} \right) = \left(\begin{array}{l} \text{Amount} \\ \text{of loss} \end{array} \right)$$

$$2) \quad \text{Amount of loss} \times \text{Coverage rate} = A$$

3) The insurance claims should be the amount in A above or the insured amount, whichever is smaller.

▪ **Remittance risks**

1)

$$\left(\begin{array}{l} \text{Amount which cannot} \\ \text{be remitted or the} \\ \text{amount for acquisition,} \\ \text{whichever is smaller} \end{array} \right) - \left(\begin{array}{l} \text{Amount saved due} \\ \text{to insured risks} \end{array} \right) - \left(\begin{array}{l} \text{Amount} \\ \text{recovered, etc} \end{array} \right) = \left(\begin{array}{l} \text{Amount} \\ \text{of loss} \end{array} \right)$$

2) Amount of loss X Coverage rate = B

3) The insurance claims should be the amount in B above or the insured amount, whichever is smaller.

(2) For commercial risk

1)

$$\left(\begin{array}{l} \text{Amount of} \\ \text{Acquisition} \end{array} \right) - \left(\begin{array}{l} \text{Amount} \\ \text{recovered etc.} \end{array} \right) = \left(\begin{array}{l} \text{Amount of} \\ \text{loss} \end{array} \right)$$

2) Amount of loss X Coverage rate = C

3) The insurance claims should be the amount in C above or the insured amount, whichever is smaller.

8. Basic Premium

(1) Premium rate

1) Political risk

On a case-by-case basis with an annual rate of ¥0.55 per each ¥100 of the insured amount as the basic rate

2) Commercial risk

On a case-by-case basis with an annual rate of ¥1.00 per each ¥100 of the

insured amount as the basic rate

The premium rate will vary according to the profitability of parties in which an investment was made, and the country risk involving any host country.

(2) Review of premium rate

The premium rate for commercial risk is reviewed in the fourth, seventh, and tenth fiscal year from the beginning of the obligation period of the insurance.

9. Duties Regarding Collections on Investments and Payment of Funds Collected

(1) Duties Regarding Collections on Investments

Even after requesting payment of the insurance claims payable, the insured shall make every effort to collect on the loans, etc. any compensation for losses, or on any other monetary claims of a similar nature.

(2) Payment of Funds Collected

Should any funds be collected after requesting payment of insurance claims payable, the insured shall notify the Minister of International Trade and Industry of the receipt of such funds within one month from the date immediately following the date when the collection was made (if the date when the collection was made falls on or before the date the payment of the insurance claims payable was received, the date when the payment of the relevant insurance claims payable was made) and pay the amount designated by the revenue collector to the National Treasury on or before the date designated by such collector.

10. Procedure for Overseas Investment Insurance

To conclude an insurance contract, the following procedures should be taken:

(1) Preliminary Application

To conclude an insurance contract, submit a preliminary application on or before the day prior to the remittance day (if two or more remittances are to be made, the first remittance day).

A preliminary application will be accepted by the Overseas Investment Insurance Office, Export, Import and Investment insurance Department (EID/MITI) and Regional Bureaus of MITI.

(2) Formal Application

After the preliminary application has been submitted, submit a formal application to the Overseas Investment Insurance Office, no less than one month after the remittance day.

(3) Insurance Contract

The formal application will be evaluated by MITI before concluding an insurance contract.

(4) Issuance of Insurance Policy, etc.

On behalf of MITI, Japan Trade and Investment Insurance Organization will issue (1) The overseas investment insurance policy, (2) Approval of changes in (1) (including any increase or decrease in the insured amount, and other approvals for changes), and (3) Notice for payment of the overseas investment insurance premium.

Documents to be Attached to the Formal Application

Documents to be attached to the formal application will vary according to the type of investment, methods for remittance, type of business, and the legal system in the host countries in which investment activities occur. In general, copies of the following documents are required:

- (1) Investment and loan contracts, etc.

For example, joint venture contracts, loan agreements, guarantee contracts, business collaboration contracts, etc.

In the case of a capital increase, the minutes of the general meeting of shareholders when the capital increase was approved should be attached. In the case of an investment in wholly owned subsidiaries of Japanese companies and direct business activities related to Investment type 3, the minutes of the board of directors meeting of the insured (investors) should be attached.

- (2) Investment permission, etc. issued by the government of the host country
- (3) Report to the Bank of Japan
- (4) Any documents which provide evidence that investments and loans have been made

[Cash remittance]

Remittance statements related to investments which were issued by authorised foreign exchange banks and remittance applications with an indication of the foreign currency used, amount paid in yen, conversion rate, date of remittance, remittee, remitter, purpose of remittance, bank's certification stamp, and investment report number assigned by the Bank of Japan.

[Investment in kind]

Export approval, shipping documents, supply contract, receipt of payment for exported cargo, asset ledgers, etc.

[Capital increase without compensation]

Documents which provide evidence of the capital increase and the foreign exchange rate on that day

[Surety obligation]

Documents of the main obligor (borrowing company) which provide evidence that the loans were made and the foreign exchange rate on the day the proceeds of the loans were received (opening price of customer spot T.T. selling rate announced by foreign exchange banks)

If the remittance was made in installments or was made by several banks, attach "List of total remittance amount"

- (5) Articles of incorporation of the other party to the overseas investment
- (6) Repayment schedule list (for loans)

- (7) Notice of evaluation results on preliminary applications for overseas investment insurance
- (8) Other documents required for each transaction

Documents to be Attached to the Preliminary Application

- **Political Risk**

Business projections, financial statements, etc. (balance sheets, profit and loss statements, statements of appropriations, and income and expenditure statements)

- **Commercial Risk**

A copy of the following documents related to the insured (investors), partners, the other party to the overseas investment.

- I Documents related to the insured (investors)

- 1) Balance sheet (for the three years prior to the preliminary application)
- 2) Profit and loss statement
- 3) Surplus appropriations statements or deficit disposition statements
- 4) Income and expenditure statements

- II Documents indicating the partner's ability to perform activities

- III Documents related to the other party to the overseas investment

- (A) New Companies

- 1) Feasibility study statement
- 2) Business projections
- 3) Projection of funds
- 4) Estimated balance sheet (for fiscal terms to be covered by the insurance)
- 5) Estimated profit and loss statement
- 6) Estimated surplus appropriations statement or deficit disposition statement
- 7) Estimated income and expenditure statements
- 8) Loan and investment contracts, etc. (including guarantee contracts)

(B) Existing companies

In addition to the documents in (A) above, the following documents for the three years prior to the preliminary application (for companies in which investments were made with less than three years business experience, for the period of their operation should be attached)

- 1) Balance sheet
- 2) Profit and loss statement
- 3) Surplus appropriations statement or deficit disposition statement
- 4) Income and expenditure statements