

Prevention of corruption in connection with SERV buyer credit insurance

Schweizerische Exportrisikoversicherung
Assurance suisse contre les risques à l'exportation
Assicurazione svizzera contro i rischi delle esportazioni
Swiss Export Risk Insurance



Annex to the Insurance Application Bank/financial institution, V1.2

The Applicant is aware that, for insurance to be granted and be valid, it is a prerequisite that Swiss legal provisions are and will be complied with in connection with the loan agreement forming the basis of this application.

In particular, the Applicant provides assurance that:

1. the loan agreement has not or will not come about as a result of a criminal offence, in particular bribery;
2. it and any representatives and/or agents that it has involved in this export contract do not appear on any publicly accessible exclusion list of international financial institutions and
3. it and any representatives and/or agents that it has involved in this loan agreement are not currently being prosecuted for bribery and corruption and have not been convicted of bribery and corruption in the last five years.

Duty of disclosure

The Applicant is aware that, during the application procedure and after the insurance applied for has been granted, it must give full and accurate information about any and all circumstances of the loan transaction that are materially relevant to the granting of the buyer credit insurance. This also includes answering SERV's questions regarding the identity of persons who are or were involved on their behalf in arranging the loan agreement (agents), and the reason for and amount of any payments to those persons.

Information

We have taken due note of SERV's attached legal information.

Place and date:

Legally valid signature of Applicant / Company stamp

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Legal information:

Swiss criminal law on corruption makes the bribery of foreign public officials a criminal offence. The relevant provisions of the Swiss Penal Code (SPC, SR 311.0) are worded as follows:

Art. 322ter of the SPC – Bribery of Swiss public officials Bribery

Anyone offering, promising or granting an undue advantage to a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army in connection with their official activity, in return for any act or omission to his/her benefit or to the benefit of a third party that is in breach of their duty or at their discretion shall be punished with a term of imprisonment of up to five years or with a fine.

Art. 322quinquies SPC – Granting of advantages

Anyone offering, promising or granting an undue advantage to a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army with regard to the performance of their duties shall be punished with a term of imprisonment of up to three years or with a fine.

Art. 322septies SPC – Bribery of foreign public officials

Anyone offering, promising or granting an undue advantage to a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army working for a foreign state or an international organisation, in connection with their official activity, in return for an act or omission to his/her benefit or to the benefit of a third party that is in breach of their duty or at their discretion,

anyone who, as a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army of a foreign state or of an international organisation, asks for, obtains the promise of or accepts in connection with their official activity an undue advantage for him/herself or a third party in return for an act or omission that is in breach of his/her duty or at his/her discretion, shall be punished with a term of imprisonment of up to five years or with a fine.

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Art. 322octies SPC – Common provisions

1. ... abrogated by section II 2 of the federal law of December 13, 2002, which has been in force since January 1, 2007.
2. Advantages allowed under public service law as well as minor favours customary in society shall not be deemed to be undue advantages.
3. Private individuals who perform public duties shall be put on a par with public officials.

SERV will not grant any buyer credit insurances in respect of credit transactions that have come about as a result of criminal acts. If there is good reason to assume or suspect such criminal acts, SERV will request further investigations during the application procedure. Where evidence only becomes available after the insurance has been arranged, the insurance may be cancelled or the indemnification of a claim that has been submitted may have to be refused. If there are serious breaches of the legal provisions, a temporary ban on future insurance must be considered. According to SERV's general terms and conditions, any false information given when the application is filed shall lead to the exclusion of indemnification. In addition hereto, the penal provisions of the Swiss Export Risk Insurance Act (SERVG) also apply.

The Swiss Federal Unfair Competition Act (UCA, SR 241) makes private bribery a criminal offence as follows:

Art. 4a UCA – Bribing and taking bribes

A person shall be deemed to be acting unfairly if he/she

offers, promises or grants an undue advantage to an employee, a partner, a representative or other assistant of a third party in the private sector in connection with their official activity, in return for an act or omission to his/her benefit or to the benefit of a third party that is in breach of their duty or at their discretion;

as employee, partner, representative or other assistant of a third party in the private sector, asks for, obtains the promise of or accepts in connection with his/her official or commercial activity an undue advantage for his/herself or a third party for an act or omission that is in breach of his/her duty or at his/her discretion.

Advantages approved contractually by the third party, as well as minor favours customary in society shall not be deemed to be undue advantages.

Art. 23 UCA – Unfair competition

1. Anyone who deliberately engages in unfair competition as per Articles 3, 4, 4a, 5 or 6 shall upon application be punished with imprisonment or with a fine of up to CHF 100,000.
2. Anyone who under Articles 9 and 10 is entitled to bring a civil action can institute criminal proceedings.

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For the criminal liability of enterprises under the Swiss Penal Code (SPC) and the Swiss Unfair Competition Act (UCA), the following also applies:

Art. 102 SPC – Criminal liability and responsibility of enterprises

If anyone in a company has committed a crime or an offence in the exercise of their business duties pursuant to the company's purpose, but, because of shortcomings in the company organisation, this act cannot be attributed to a specific natural person, then the crime or offence shall be attributed to the enterprise. In this case, the enterprise shall be punished with a fine of up to CHF 5 million.

If a criminal offence as per Articles 260ter, 260quinquies, 305bis, 322ter, 322quinquies or 322septies, paragraph 1, is involved, or one in accordance with Article 4a, paragraph 1(a), of the Swiss Federal Unfair Competition Act of 19 December 1986, then the enterprise shall be punished irrespective of the criminal liability of natural persons if the company can be accused of failing to take all necessary and reasonable organisational measures to prevent such a criminal offence.

The court shall determine the fine in particular on the basis of the gravity of the offence and the seriousness of the organisational deficiency and the damage caused, as well as on the basis of the company's financial strength.

For the purposes of this Article, the following shall be deemed to be enterprises:

- a) legal persons under private law;
- b) legal persons under public law, with the exception of central, regional and local authorities.
- c) Companies;
- d) Sole proprietorships.

Please take note of Article 36 of the Federal Act on Swiss Export Risk Insurance (SERV-Act).