
Legal basis

- SERVG: Swiss Export Risk Insurance Act (version of 1 January 2007)
- SERV-V: Swiss Export Risk Insurance Ordinance (version of 1 May 2008)
- Insurance policy and applicable general terms and conditions

Disclaimer

The purpose of this information sheet is to give exporters and banks an overview of the main aspects of SERV coverage for export and export credit transactions and of claims. It is not all-encompassing and SERV cannot guarantee accuracy for each case. The legal bases mentioned above alone are applicable.

Concluding and executing export and export credit transactions

Policyholders must take all reasonable measures, before and after a policy is issued, to mitigate or prevent losses in the first place, according to prevailing circumstances. They should notify SERV unasked of changes of the contract such as change of the foreign content share or changes to delivery dates and periods.

Throughout an export or credit transaction, policyholders are asked to exercise the degree of due diligence called for by transactions conducted at their own risk.

Policyholders should, at conclusion and performance of export and export credit transactions, ascertain that

- the export and credit agreements comprehensively document complete, clear conditions (such as delivery and acceptance conditions, deadlines, applicable law and jurisdiction);
- suitable loss-prevention procedures are followed, e.g.:
 - o choice of instruments of payment (letter of credit, etc.) and credit conditions (milestone payments, etc.); valuable advice is available from SERV and participating banks;
 - o agreement exists on applicable law and jurisdiction;
 - o usual insurance coverage, particularly against shipping risk, is obtained.
- prior to conclusion of the transaction, a qualified lawyer in the debtor country checks points such as legality of the contract and its conditions, and claim enforceability;
- required protocols and records are generated and kept;
- agreed securities are legitimized by, for instance, entry in the appropriate registers – for which the policyholder bears full responsibility.

SERV does not examine these documents before it issues a policy; they are pertinent only as proof of loss in case of a claim. At the same time they help defend against unjustified objections by the debtor and can aid in the swift processing of a claim by SERV.

Imminent loss

Significant violations of debtor duties or risk-increasing circumstances constitute imminent loss. The likelihood of occurrence of an insured risk must have increased apparently.

Examples:

- contractually agreed payments are past due;
- the debtor asks for an extension of the payment deadline;
- the debtor violates major contractual obligations or defaults in accepting the goods;
- changes in the economic situation or receipt of negative information about the debtor;

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- recovery or liquidation process involving the debtor (debt renegotiation, official arbitration proceedings, bankruptcy or similar).

Pre-claim management

Policyholders are obligated to notify SERV immediately of major violations of the debtor's obligations and increases in risk. A team of SERV experts will be available to advise the policyholder. The contact is the assigned underwriting manager.

The policyholder's main duties

SERV asks that the policyholder:

- continues to take all reasonable measures, according to prevailing circumstances, to mitigate or prevent loss;
- briefs SERV immediately, in writing, of measures intended and taken;
- coordinates all further measures with SERV.

Insured event (loss)

The occurrence of a loss and the expiry of the mandated waiting period constitute an insured event.

Waiting period

The waiting period for buyer credit insurance is one month, for other kinds of coverage (supplier credit, pre-shipment risk, contract bond, confiscation risk) it is three months. The period begins at the occurrence of the insured loss (such as non-payment of the insured debt on the due date).

SERV asks that the policyholder

- provide truthful, complete information about the transaction involved;
- inform SERV immediately of deviations from the documented situation;
- inform SERV immediately of risk aggravating factors pertaining to the insured transaction;
- take all reasonable measures, according to prevailing circumstances, to prevent the loss after the fact or mitigate it;
- follow SERV's directions.

Request for indemnification

A claim form is provided upon request. Claims have to be reported within two years of the insured event. Claims submitted later are invalid, and SERV must decline settlement.

With your claim form, please include:

- all documents substantiating the occurrence of the insured loss, its assessment and causal relationships.

In cases of insured debt: proof of the existence and due date of the claimed amount (such as supply contract, shipping documents, invoices, statement of advance payments, payment plan, written reminders, etc.);

- documentation of agreed securities to the extent that they figure in the policy (e.g. payment guarantees), their existence, amount and due date;
- any other documents requested by SERV.

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Claim management

Once a claim is made, a team of SERV experts is available to advise the policyholder. Now the initial contact is a SERV claims manager. SERV keeps the underwriting manager up to date on the state of the claim.

Insured risks

Risk coverage differs depending on the kind of coverage (supplier credit (S), buyer credit (B), contract guarantee (CG), confiscation risk (C), pre-shipment risk (P)) as well as policy conditions. Following is a list of risks covered by SERV.

Political risks

SERV considers unforeseeable, exceptional measures by foreign states, war or war-like events, revolution, annexation, expropriation, civil unrest in the debtor country and domestic government measures (export prohibitions) as political risks.

For an event to be covered by political risk, such risk must be the immediate cause of the loss. In the case of an insured debt (S and B), the event must render payment of the insured debt on its due date an impossibility.

Transfer risk and payment moratorium

Transfer risks concern sums the foreign debtor has paid in to the central bank for transfer to the policyholder not being converted into the agreed currency or not transferred at the due date because of restrictions applied to international payments (such as insufficient foreign currency reserves).

Payment moratoria are defined as non-payment at the due date of insured debt because of government or legal restrictions and/or multilateral agreements.

In the case of an insured debt (S and B), the event must render payment of the insured debt on its due date an impossibility.

Force majeure

As force majeure are counted hurricanes, tornadoes, flooding, earthquakes, volcanic eruptions, spring tide/tsunamis and nuclear accidents outside Switzerland. SERV's liability for such risks is limited to cases in which the policyholder is unable to obtain advance coverage for such risks with private insurers at market conditions.

However, only events that are the immediate cause of a loss are covered. In the case of an insured debt (S and B), the event must render payment of the insured debt on its due date an impossibility.

Credit risk

Coverage extends to the commercial risk associated with payment default of an insured debt due to the foreign debtor's unwillingness or inability to pay (protracted default).

Cases in which documents triggering payment are not issued or not accepted, in contravention of the terms of the contract, are treated as non-payment of the insured debt. The same applies when the debtor, contrary to the terms of the contract, prevents payment of a linked buyer credit.

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Risks arising from guarantees (bonds)

SERV coverage extends to fair calling of contract guarantees (bid guarantees, advance payment guarantees, shipping guarantees, performance guarantees) needed by the policyholder to meet his contractual obligations to the customer. Prerequisite is that the policyholder is unable to fully meet contractual obligations due to realization of a political risk, or meeting contractual obligations is unreasonable due to a transfer risk, payment moratorium or a force majeure. SERV coverage also extends to unfair calling of the contract guarantee for credit risks by the debtor.

Foreign currency contingency risk

The object of the coverage is to eliminate the limit on indemnification paid to the premium rate of exchange for export or finance transactions in a common foreign currency (e.g. EUR, USD, GBP, YEN) and a credit term of more than 24 months. In case of a claim the policyholder is compensated, in Swiss francs, in an amount equal to the value of the foreign currency at the time of the event's occurrence.

Specifically, if the insured foreign currency appreciates against the Swiss franc, the policyholder does not bear the difference between the premium rate of exchange and the rate of exchange at the time of the insured event. Indemnification on coverage in a foreign currency is paid in the currency of the policy concerned.

Conditions for indemnification

SERV asks that policyholders give proof of the following conditions for indemnification:

- occurrence of an insured risk;
- the loss and its amount.

Existence, amount and due date of insured debts need to be documented.

Should a debtor raise reasonable objections to a payment demand, or if other well-founded doubts about the existence and amount of the demand exist, SERV normally requires proof in form of a judgment rendered by the court or arbitration board concerned. "Legal enforceability" is to be understood according to item 6.2 GT&C S and B.

- proof of the causal relationship between insured risk and loss. In other words, SERV asks for proof that the realization of an insured risk led to the loss for which the claim is being made in the stated amount.

Any securities listed in the insurance policy require similar proof. SERV also asks that the policyholder should document having met his obligations, particularly as regards loss prevention or minimization. Should SERV note material breach of such obligations by the policyholder it may, wholly or in part and in consideration of the circumstances, refuse a claim.

Examples of possible material breach of obligations:

- ineffective establishment of required securities;
- lack of timely protest of a bill;
- lack of notification of changes in circumstances surrounding coverage;
- lacking, delayed or incorrect notification of risk aggravating factors.

Indemnification

Indemnification is paid within 30 days of SERV's written approval of a claim. Indemnities in a foreign currency are converted at the Swiss National Bank's reference rate of exchange on the day of the insured event (indemnity conversion rate). Application of the indemnity conversion rate is limited to the premium conversion rate of exchange unless coverage, paid for by a premium surcharge,

exists for a suspension of said conversion rate limitation (foreign currency contingency risk). Indemnification on policies in foreign currency is paid in the appropriate currency.

Transfer of rights / legal action

Upon payment of the indemnity, claims against foreign debtors and collateral security in the amount of the indemnity devolve to SERV. Should applicable law prevent transfer of rights, or should SERV in a specific case initially not insist on a transfer of rights, SERV asks the policyholder to exercise such rights on its behalf as part of his duty to mitigate loss.

The policyholder's responsibility for taking measures to recover assets or mitigate losses is unaffected by any transfer of rights. When insured claims are a part of debt rescheduling and restructuring, SERV determines additional measures to recover assets or mitigate losses for the overall claim. The policyholder is obligated to accept this condition without giving his specific consent.

Loss mitigation measures (recovery)

SERV asks that the policyholder continue to take all reasonable measures, according to prevailing circumstances, to mitigate the loss.

As regards credit risk in particular, the policyholder has to:

- observe applicable statutes of limitations and their suspension, as applicable;
- level timely protest against bills of exchange and cheques in default;
- exercise the formalities and terms of recovery and liquidation procedures in the registration and subsequent pursuit of claims;

and keep SERV informed. If indicated, SERV asks that the policyholder calls in local lawyers.

As part of a recovery strategy, please submit loss mitigation measures and an estimate of their cost to SERV in advance for its approval. Depending on the extent of coverage, SERV and the policyholder bear proportionate shares of the cost of loss mitigation measures taken following an insured event settled by SERV that occurred with its approval.

Recovery procedures

After payment of an indemnity the policyholder is obligated to immediately inform SERV of incoming payments eligible for set-off and of sales and enforcement proceeds and other financial advantages in connection with the insured loss (recoveries). The policyholder is equally obligated to pay a pro-rata share of such incomings to SERV, as determined by the cover ratio.

Special features of buyer credit insurance

When a claim is reported, SERV accepts the export as separate from and independent of the financing transaction concerned. This means that the bank is required to merely document existence, amount and due date of its account receivable (plus securities, if any). Should the debtor, in the course of the export transaction, raise objections that cannot be asserted against the debt due, SERV also considers such objections as immaterial.

The bank is liable only for its own breach of obligations (item 16.2, GT&C B) in connection with buyer credit insurance. Breach of obligations on the part of the exporter for which it cannot be held accountable does not influence indemnification.

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Should an exporter fulfil a contract incorrectly or be in grave breach of obligations, and should this cause the debtor to not pay the debt due, SERV, in its relationship with the bank, will bear the recourse risk against the exporter (limited to the amount of the indemnification).

Please note that following indemnification and regardless of the transfer of debt to SERV, the policyholder's obligation to take recourse and loss mitigation measures against the debtor continues unabated (item 13.1 GT&C B).

Exporter's undertaking

Granting buyer credit insurance is predicated on the exporter providing SERV with a power of attorney and formal undertaking. If a loss is due to insufficient performance of the exporter or breach of obligations by the exporter leading, per se, to exclusion of indemnification, SERV may take recourse against the exporter based on the formal undertaking.
