

Unofficial, not legally binding translation of the German, French and Italian texts

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



Federal Act on the Export Risk Guarantee

946.11

of 26 September 1958 (as of 1 October 1996)

The Federal Assembly of the Swiss Confederation,
based on Articles 31^{bis} par. 2, 31^{quinquies} and 64^{bis} of the Federal Constitution¹, upon examination of
the Message of the Federal Council of 13 May 1958²,
resolves:

Art. 1

¹ In the interest of the creation and preservation of jobs and the furtherance of trade with abroad,
the Confederation may facilitate the acceptance of export orders the payment for which incurs par-
ticular risks, by granting a guarantee.

² In case of exports to the poorer developing countries, the principles of Switzerland's aid in devel-
opment policy must be taken into consideration.³

Art. 2

Particular risks within the meaning of Article 1 are deemed to be those hazards to the receipt of
payments which arise from long-term manufacturing, payment or transfer periods in connection
with politically and economically uncertain conditions.

Art. 3

The guarantee provides for partial cover of potential loss or arrears in payment in relation to certain
export transactions. As a rule, the guarantee is issued in favour of the exporter, it may, however,
also be granted to third parties.

Art. 4

Subject to a exceptions in individual cases, the guarantee comprises the partial cover of losses
which have been incurred by events or circumstances such as:

- a. deterioration of foreign currencies, transfer difficulties or moratoria;
- b. inability or refusal to pay by States, municipalities and other public entities as well as private
entities wholly or predominantly owned by public entities or fulfilling public duties, which have
placed the order;

AS 1959 391 / SR 946.11

¹ SR 101

² BBI 1958 I 956

³ Introduced by Sct. I of the Federal Act of 10 October 1980, in force since 1 February 1981 (AS 1981 56 58, BBI 1980 II 73)

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- c.⁴ inability or refusal to pay by States, municipalities, other public entities, national banks, public or private banks, which have secured the claim by a payment guarantee or which have opened an irrevocable letter of credit;
- d. exceptional measures by foreign governments or political events abroad which prevent a private debtor from duly performing under the contract, lead to the confiscation of, or damage to goods which are the property of the exporter or which prevent the re-exporting of those goods;
- d. unreasonableness or impossibility of delivery as a consequence of circumstances within the meaning of letters a to d or due to lack of transport facilities abroad.

Art. 5

The guarantee does not cover losses due to:

- a. the exporter's breach of contract,
- b. the inability or refusal to pay by a private buyer,
- c. damage, destruction or loss of the export goods provided that the exporter could have obtained insurance coverage for these risks.

Art. 6⁵

The guarantee, to be determined on a case-by-case basis, amounts to a maximum of 95 percent of the delivery amount plus any loan interest.

Art. 6a⁶

¹ The Confederation shall establish a legally dependent, self-supporting fund for the export risk guarantee (the Fund); the fees, reimbursements, claims for reimbursements and rights acquired from guarantee utilisations shall be credited, and the guarantee utilisations and administration costs shall be debited to the Fund.

² Expenses and income of the Fund are not listed part of the financial accounts of the Confederation.

Art. 6b⁷

¹ The Fund is administered by the Confederation. Insofar as the assets are not used to cover current requirements of the Fund, the Confederation shall pay interest thereon.

² The Confederation may place the necessary sums, which must be repaid with interest, at the disposal of the Fund.

⁴ Version pursuant to Sct. I of the Federal Act of 22 March 1996, in force since 15 July 1996 (AS 1996 2444 2445; BBI 1995 III 1296).

⁵ Version pursuant to Sct. I of the Federal Act of 23 June 1978, in force since 1 January 1979 (AS 1978 1985; BBI 1977 III 635).

⁶ Introduced by Sct. I of the Federal Act of 10 October 1980, in force since 1 February 1981 (AS 1981 56 58; BBI 1980 II 73).

⁷ Introduced by Sct. I of the Federal Act of 10 October 1980, in force since 1 February 1981 (AS 1981 56 58; BBI 1980 II 73).

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³ The Confederation's Statutory Auditors exercise financial supervision over the Fund.

Art. 6c⁸

¹ The annual accounts statement, the balance sheet and the statement of assets shall be published.

² In other respects, the Federal Council regulates the organisation and administration of the Fund.

Art. 7⁹

The Confederation imposes on the guarantee holder a fee to be determined by Ordinance. The fee takes account of the respective risks, the amount and term of the guarantee and must ensure the long-term self-sufficiency of the Fund.

Art. 8

The guarantee may only be assigned together with the exporter's principal claim. The assignment is subject to prior approval and can be made subject to the fulfilment of special conditions. The exporter remains liable for all obligations imposed on him under the Act even after the guaranteed claim has been assigned.

Art. 9

The exporter and the guarantee holder are obliged to provide the information necessary to assess the export transaction and to allow the examination of such information.

Art. 10

The exporter and guarantee holder must take all measures necessary under the prevailing circumstances to avoid a loss.

Art. 10a¹⁰

Guaranteed claims may be included in a consolidation agreement between the Confederation and the buyer State. Entitlement to indemnification under the guarantee is not waived thereby.

Art. 11¹¹

If the claim has become overdue and notice of the damage been given, the Confederation indemnifies that part of the proven loss or payment in arrears determined in the guarantee order.

⁸ Introduced by Sct. I of the Federal Act of 10 October 1980, in force since 1 February 1981 (AS **1981** 56 58; BBI **1980** II 73).

⁹ Version pursuant to Sct. I of the Federal Act of 10 October 1980, in force since 1 February 1981 (AS **1981** 56 58; BBI **1980** II 73).

¹⁰ Introduced by Sct. I of the Federal Act of 10 October 1980, in force since 1 February 1981 (AS **1981** 56 58; BBI **1980** II 73).

¹¹ Version pursuant to Sct. I of the Federal Act of 21 March 1973, in force since 1 July 1973 (AS **1973** 1024 1025; BBI **1972** II 1020).

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Art. 12

¹ Upon payment under the guarantee by the Confederation, the overdue principal claim including any accessory rights and the title to any non-delivered export goods shall be transferred to the Confederation in the amount of its payment.

² After payment under the guarantee, the exporter and the guarantee holder shall initiate debt collection proceedings and sell any non-delivered export goods at the best possible price. They must, without request, transfer all received payments or proceeds to the Confederation to the extent of its payment.

Art. 13

Should it result that the requirements of this Act for payment under the guarantee were not fulfilled, the exporter shall reimburse the respective amount to the Confederation with 5 percent interest, and this even if the payment was made to a third party.

Art. 14

Organisations of trade and industry may be called upon to participate in the implementation of this Act. Their organs are subject to the same regulations with respect to responsibility and professional secrecy as the civil servants of the Confederation.

Art. 15

Should special circumstances so justify, the Federal Council may introduce or support other types of export risk guarantees.

Art. 15a¹²

¹ Orders granting or refusing the guarantee are subject to appeal pursuant to the general provisions on the federal administration of justice.

² Other orders are subject to appeal to the Appeals Commission of the Federal Department for the National Economy; its decision is final unless the Administrative Appeal to the Federal Tribunal is admissible.

Art. 16

¹ Whoever, by virtue of incorrect or incomplete information, causes a guarantee to be granted or paid out either for himself or a third party, whoever, by means of such information, avoids the delivery or repayment obligation within the meaning of Article 12 paragraph 2 and Article 13, whoever, in case of measures to avoid losses in accordance with Article 10 or in case of procedures within the meaning of Article 12 paragraph 2 does not fulfil his obligations, shall be punished by imprisonment of up to one year or a fine of up to CHF 20'000.--.

² Infringements committed abroad are also punishable.

¹² Introduced by Annex Sct. 63 of the Federal Act of 4 October 1991, in force since 1 January 1994 (AS 1992 288; SR 173.110.01 Art. 2 par. 2; BBl 1991 II 465).

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³ Criminal prosecution based on the special provisions of the Penal Code¹³ is in all cases reserved.

⁴ If the infringement is committed within a business operation of a legal entity or a general or limited partnership or an individual enterprise, the penal provisions apply to those persons who have acted on their behalf or should have done so, however, the legal entity, the company or the owner of the individual enterprise is jointly liable for any fines and costs, unless the responsible management proves that it exercised the required care in order to ensure adherence to the provisions by the said persons. The persons jointly liable have the same party rights as the accused.

⁵ Prosecution is in the jurisdiction of the Cantons. All judgements and decisions to stay proceedings must be notified without delay by fully executed copies to the Federal Attorney's Office for the attention of the Federal Council.

Art. 17

¹ The Federal Council determines the date of entry into force of this Act.

² On the same date, the Federal Act of 6 April 1939¹⁴ on the Export Risk Guarantee is repealed. It continues to apply to guarantees granted before the entry into force of this Act. However, this Act, with the exception of Articles 4, 6 and 7, also applies in such cases with respect to facts which have occurred after its entry into force.

³ Upon the entry into force of the amendment of 10 October 1980 all payment transactions of the export risk guarantee shall be effected via the Fund. The Federal Treasury and the Fund shall account as per 31 December 1980. The reserve of the export risk guarantee shall be credited to the Fund.¹⁵

Art. 18

The Federal Council is charged with the implementation of this Act.

Date of entry into force: 15 May 1959¹⁶

¹³ SR 311.0

¹⁴ [BS 10 512]

¹⁵ Introduced by Sct. I of the Federal Act of 10 October 1980, in force since 1 February 1981 (AS 1981 56 58; BBI 1980 II 73).

¹⁶ Resolution of the Federal Council of 1 May 1959 (AS 1959 395)