

Ordinance on the Swiss Export Risk Insurance

(SERV Ordinance, SERV-V)

Of 25 October 2006 (Last updated 1 January 2023)

Federal Act 946.101

Unofficial, not legally binding translation of the German text

Content

| | |
|---|----------|
| Section 1: General conditions | 4 |
| Art. 1 Finance transactions tied to export transactions | 4 |
| Art. 2 | 4 |
| Art. 3 Swiss origin or Swiss content | 4 |
| Art. 4 Maximum cover ratio | 4 |
| Art. 5 Subsidiarity | 4 |
| Section 2: Application and review procedure..... | 5 |
| Art. 6 Insurance application..... | 5 |
| Art. 7 Insurance commitment in principle | 5 |
| Art. 8 Duty to inform and due diligence | 5 |
| Art. 9 Basis of decision..... | 5 |
| Section 3: Conclusion of the insurance | 5 |
| Art. 10 Conclusion of the insurance | 5 |
| Art. 11 Review of contracts | 6 |
| Art. 12 Currency | 6 |
| Art. 13 Content of the insurance | 6 |
| Art. 14 Changes in circumstances | 6 |
| Section 4: Premiums | 7 |
| Art. 15 Expense and insurance premiums | 7 |
| Art. 16 Premium tariff | 7 |
| Section 5: Insured event | 7 |
| Art. 17 | 7 |
| Section 6: SERV Organisation..... | 7 |
| Art. 18 Election and composition of the Board of Directors | 7 |
| Art. 19 Auditors..... | 8 |
| Art. 20 Implementation provisions for the personnel regulations | 8 |
| Section 7: Finance | 8 |
| Art. 21 Accounting | 8 |
| Art. 22 Insurance transactions with del credere risk | 8 |
| Section 8: Debt rescheduling and restructuring | 8 |
| Art. 23 Debt rescheduling and restructuring agreements | 8 |
| Art. 24 Compensation in the case of debt rescheduling | 8 |
| Art. 25 Amendments to agreements | 9 |
| Section 9: Supervision | 9 |
| Art. 26 Framework of obligations | 9 |
| Art. 27 Reporting | 9 |
| Art. 28 Insurances of particular importance | 9 |

| | |
|---|----------|
| Section 10: Final provisions | 9 |
| Art. 29 Repeal of previous law | 9 |
| Art. 30 Amendment of previous law | 10 |
| Art. 31 Transitional provisions..... | 10 |
| Art. 32 Establishment of SERV | 10 |
| Art. 33 Entry into force | 10 |

The Swiss Federal Council, based on Article 11 paragraph 2, Article 17 paragraph 2, Article 29 paragraph 5 and Article 31 paragraph 5 of the Federal Act of 16 December 2005 on Swiss Export Risk Insurance¹ (SERV Act), ordains:

Section 1: General conditions

Art. 1 Finance transactions tied to export transactions

On the basis of Article 11 paragraph 1 of the SERV Act, Swiss Export Risk Insurance (SERV) may also insure:

- a) Finance transactions that are tied to export transactions;
- b) The delivery of goods and equipment in connection with export transactions

Art. 2 ²

Art. 3 ³Swiss origin or Swiss content

¹ Goods are considered to be of Swiss origin if they were fully obtained or produced or sufficiently worked or processed in Switzerland in accordance with Articles 9 to 16 of the Ordinance of 9 April 2008⁴ on the Certification of the Non-Preferential Origin of Goods.

² If goods are not of Swiss origin, the amount of Swiss content must be at least 20% of the order value. The amount of Swiss content is regarded as the difference between the order value of the export contract and the value of foreign content supplied or subcontracted.⁵

³ SERV may grant insurance even if the amount of Swiss content is below 20% provided that this complies with the objectives of SERV pursuant to Article 5 of the SERV Act and the principles of its business policy pursuant to Article 6 of the SERV Act. In doing so, SERV shall take the following aspects into account:⁶

- a) The share of the amount of Swiss content generated by performance that is essential to the success of the export transaction, such as the production of key components, research and development, or engineering and planning services, must be of sufficient importance.
- b) The amount of Swiss content in relation to the exporter's total revenue from export transactions within a specified period of time must be appropriate.
- c) The average amount of Swiss content in all export transactions of an exporter insured by SERV that are carried out within a specified period of time must be appropriate.
- d) Newly developed products must be exported or new markets entered.

Art. 4 ⁷Maximum cover ratio

¹ The maximum cover ratio is 95% of the insured amount.

² For the Working Capital Insurance the maximum cover ratio is 80 percent. In exceptional cases, SERV may raise the cover ratio up to 95 percent on reasoned application.

³ For the counter guarantee, the maximum cover ratio is 90% of the guaranteed amount. In exceptional cases, SERV may raise the cover ratio up to the full guaranteed sum on reasoned request.

⁴ Apart from this, the policyholder cannot purchase any additional percentage of cover.

Art. 5 Subsidiarity

¹ SR 946.10

² Repealed by clause 1 of the Ordinance of 12 June 2015, with effect from 1 January 2016 (OC 2015 2221)

³ As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

⁴ SR 946.31

⁵ As amended by clause I of the Ordinance of 23 September. 2022, with effect from 1 January 2023 (OC 2020 550).

⁶ As amended by clause I of the Ordinance of 23 September. 2022, with effect from 1 January 2023 (OC 2020 550).

⁷ As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

- ¹ SERV does not insure marketable risks.
 - ² It may insure marketable risks if the policyholder does not have access to sufficient insurance offers.
 - ³ The distinction between marketable and non-marketable risks is based on practice in the European Union.
 - ⁴ SERV publishes distinction criteria.
-

Section 2: Application and review procedure

Art. 6 Insurance application

- ¹ The insurance application may be limited to individual insurance products offered by SERV.
- ² SERV determines the extent to which risk selection is possible within insurance products.

Art. 7 Insurance commitment in principle

- ¹ Before concluding the export transaction, the applicant may apply to SERV for an insurance commitment in principle.
- ² By providing an insurance commitment in principle, SERV guarantees that it will conclude the insurance applied for, provided that the circumstances and legal position have not materially changed.
- ³ The insurance commitment in principle is subject to a time limit. SERV may extend it on request.

Art. 8 Duty to inform and due diligence

The applicant is obliged to:

- a) ⁸Give SERV all information that is relevant to the insurance transaction, especially information on corruption and environmental aspects as well as human rights;
- b) Present the facts completely and correctly and communicate any changes of the facts to SERV without delay.

Art. 9 Basis of decision

- ¹ SERV reviews the application based on the written information provided by the applicant.
 - ² It may request that the applicant furnish information or expert reports at the applicant's own expense if SERV considers this necessary for this risk assessment or survey of harmlessness.
 - ³ It may fully or partially impose upon the applicant the cost of procuring any information necessary for making the decision.
-

Section 3: Conclusion of the insurance

Art. 10 ⁹Conclusion of the insurance

- ¹ SERV decides on the conclusion of the insurance as soon as the application and review procedure is completed and the policyholder has given notice in writing that the export transaction or related finance transaction (underlying transaction) has been concluded. In justified exceptional cases, SERV may decide on the conclusion of the insurance before the underlying transaction is concluded.
- ² In its decision on the application, SERV may exclude risks from the insurance, limit the scope of

⁸ As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

⁹ As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

the insurance or add restrictions or conditions.

- ³ If SERV concludes the insurance in the form of a contract under public law, the following will apply:
- a) The insurance will be deemed to be concluded upon delivery of the signed insurance contract to the policyholder.
 - b) Should SERV deviate from the application or add restrictions or conditions to the insurance, the insurance will be deemed to be concluded if the policyholder agrees with the insurance delivered by SERV; SERV shall set a deadline for such agreement.

Art. 11 Review of contracts

- ¹ SERV reviews contracts with respect to the insured underlying transaction only in justified exceptional cases and if no insured event has occurred.
- ² The policyholder bears the risk of any deficiencies in the contract of the underlying transaction (documentation risk) and of the applicable law and the agreed place of jurisdiction.

Art. 12 ¹⁰Currency

- 1 The insurance is concluded in Swiss francs.
- 2 Upon request, it may be concluded in a foreign currency. SERV determines the approved foreign currencies and conditions.

Art. 13 ¹¹Content of the insurance

- ¹ The insurance is based on the written information provided by the policyholder during the application process. This information forms an integral part of the insurance.
- ² The order or the contract under public law shall contain the following information in particular:
- a) Documentation of the determining facts;
 - b) Items to be covered;
 - c) Risks covered;
 - d) Liability period;
 - e) Maximum amount;
 - f) Rights of SERV to modify the cover and issue instructions;
 - g) Conditions for indemnification;
 - h) Cover ratios;
 - i) Obligations of the policyholder and consequences of breaches of duty.
- ³ SERV defines the general terms and conditions for its insurance. These terms and conditions form an integral part of the order or the contract under public law.
- ⁴ SERV may oblige the policyholder to take extra measures to monitor the insured transaction and to inform SERV about the progress of the transaction.

Art. 14 ¹²Changes in circumstances

- ¹ The policyholder must notify SERV immediately of material changes to the basic principles on which the insurance is based.
- ² If insurance concluded on the basis of a contract under public law has to be changed, Article 10 paragraph 3 shall apply mutatis mutandis.

¹⁰ As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

¹¹ As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

¹² As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

Section 4: Premiums

Art. 15 Expense and insurance premiums

¹ SERV charges:

- a) Expense premiums to settle the review costs in connection with insurance applications;
- b) Insurance premiums as consideration for the insured risk.

² SERV may request advances.

Art. 16 Premium tariff

¹ The premium tariff is based on the OECD country risk model and the principle of economic viability.

² In particular, it regulates the principles, types, amounts, surcharges, discounts, charging and refund of premiums.

³ The Federal Department of Economic Affairs, Education and Research (EAER)¹³ approves the SERV premium tariff after consulting the Federal Department of Finance (FDF).

Section 5: Insured event

Art. 17

¹ The policyholder must report insured events to SERV without delay and no later than two years after the occurrence of the insured event. In the case of claims, this time limit starts from the last reported and documented maturity.

² After the expiry of the time limit pursuant to paragraph 1, claims against SERV are forfeited.

³ If there is a possibility of loss avoidance or mitigation restructuring, SERV may retroactively insure additional risks, especially additional interest.

⁴ In all other respects, the rights and duties of SERV and the policyholder in the event of a claim are, insofar as possible, set out in the General Terms and Conditions and in the individual insurance terms; specifically, this applies to the:¹⁴

- a) Conditions for the occurrence of the insured event;
- b) Indemnification procedure;
- c) Burden of proof;
- d) Principles of cost sharing before and after indemnification;
- e) Competences and obligations to take legal action;
- f) Rights of SERV concerning the inclusion of insured claims in debt rescheduling and restructuring.

Section 6: SERV Organisation

Art. 18 Election and composition of the Board of Directors

¹ The EAER creates a requirements profile that defines the expert knowledge of the Board of Directors.

² When electing the Board of Directors, the Federal Council takes into consideration the requirements profile and ensures adequate representation of the interests of the Swiss Confederation.

¹³ The name of this administrative unit was changed as of 1 January 2013 pursuant to Art. 16 para. 3 of the Publications Ordinance of 17 November 2004 (OC 2004 4937). This amendment has been made throughout the text.

¹⁴ As amended by clause I of the Ordinance of 12 June 2015, in force since 1 January 2016 (OC 2015 2221).

3 ...¹⁵

Art. 19 Auditors

- ¹ If the Act does not contain any provisions in this regard, the conditions for election, the term of office and reporting by the auditors shall be governed mutatis mutandis by the provisions of stock corporation law for auditors.
- ² The Board of Directors may request that the Federal Council dismiss the auditors.
- ³ The auditors are remunerated based on time worked.

Art. 20 Implementation provisions for the personnel regulations

The Board of Directors may issue implementation provisions for the personnel regulations.

Section 7: Finance

Art. 21 Accounting

- ¹ The Board of Directors determines the accounting principles of SERV. The corresponding federal budget provisions constitute minimum requirements.
- ² The individual accounting principles, their amendments and their effects as well as the relationship to generally accepted accounting standards and the reference values for valuations shall be disclosed in the notes to the financial statements.
- ³ Provisions shall only be made for existing obligations that are based on a past event.
- ⁴ The latent risks of the business operations of SERV that may result in obligations in the future are covered by the net equity. The principles applied to determine and calculate the net equity required to ensure the sustainable risk capacity of SERV are disclosed in the notes to the financial statements.

Art. 22 Insurance transactions with del credere risk

SERV complies with the requirements of Article 29 paragraph 2 of the SERV Act by presenting segment accounting information in the financial statements.

Section 8: Debt rescheduling and restructuring

Art. 23 Debt rescheduling and restructuring agreements

- ¹ If insured claims are included in debt rescheduling and restructuring in accordance with Article 31 of the SERV Act, SERV shall determine the further handling of the total claim. The responsibilities of the Swiss Confederation remain reserved.
- ² In debt rescheduling agreements in accordance with Article 7 paragraph 1 of the SERV Act or in the case of restructuring, debt relief of up to 100% may be agreed.

Art. 24 Compensation in the case of debt rescheduling

- ¹ Compensation pursuant to Article 31 paragraph 4 of the SERV Act is usually paid in the case of autonomous treatment of the debt. The Swiss Confederation does not pay any compensation in the case of implementation of treatment of the debt recommended by the Paris Club or other comparable international agreements for debt rescheduling with Swiss involvement.
- ² The compensation is calculated based on the extent to which the debtor country is relieved of

¹⁵ Repealed by clause I of the Ordinance of 12 June 2015, with effect from 1 January 2016 (OC 2015 2221).

debt to a greater degree than its realistic payment capacity justifies. SERV is consulted before the decision on the treatment of the debt.

- ³ The compensation is split between SERV and the policyholder in proportion to their share in the claims included in the treatment of the debt.
- ⁴ Lost interest income and any costs resulting from early repayment of debt consolidation balances are not compensated.

Art. 25 Amendments to agreements

The EAER may independently implement changes to debt rescheduling agreements pursuant to Article 7 paragraph 1 of the SERV Act that are of limited significance.

Section 9: Supervision

Art. 26 Framework of obligations

- ¹ SERV's framework of obligations pursuant to Article 33 paragraph 2 of the SERV Act is periodically reviewed and adjusted as needed.
- ² The Board of Directors shall report the need for an update to the framework of obligations in due time.

Art. 27 Reporting

The Board of Directors shall submit yearly reports on the achievement of the strategic goals to the EAER for the Federal Council.

Art. 28 Insurances of particular importance

- ¹ By informing the EAER at an early stage, the Board of Directors shall ensure that the Federal Council can issue instructions in the case of insurance of particular importance.
- ² Export transactions with material economic, social, ecological, developmental or other foreign policy-related implications are of particular importance.
-

Section 10: Final provisions

Art. 29 Repeal of previous law

The following ordinances are repealed:

1. Ordinance of 15 June 1998¹⁶ on the export risk guarantee;
2. FDEA Ordinance of 18 November 2002¹⁷ on the minimal Swiss content for the export risk guarantee;
3. FDEA Ordinance of 1 December 1998¹⁸ on the designation of currencies eligible for additional coverage of foreign currencies;
4. FDEA Ordinance of 19 August 2002¹⁹ on the assignment of import countries to the country categories for export risk guarantees;
5. FDEA Ordinance of 8 March 1999²⁰ on the charging of premia for the export risk guarantee through industry organisations;

¹⁶ [OC 1998 1624, 2000 187 Art. 21 no. 10]

¹⁷ [OC 2002 4347]

¹⁸ [OC 1999 617]

¹⁹ [OC 2002 2782, 2004 1269]

²⁰ [OC 1999 1542]

6. FDEA Ordinance of 8 March 1999²¹ on the charging of a minimal premium for the export risk guarantee.

Art. 30 Amendment of previous law

The following ordinances are amended as follows:

...²²

Art. 31 Transitional provisions

- ¹ By virtue of law, the rights and duties from guarantees and commitments granted before the entry into force of the SERV Act pursuant to Article 38 of the SERV Act pass over to SERV. SERV may grant order value increases and other changes to existing guarantees under old law.
- ² Based on commitments that were made unconditionally under previous law and whose time limits have not expired at the time of entry into force of the Act, SERV shall, upon request, conclude an insurance contract within the scope of such commitments, provided that the circumstances have not materially changed. It shall treat these contracts in accordance with the Federal Act of 26 September 1958²³ on the Export Risk Guarantee, unless the policyholder requests the conclusion of the contract under new law.

Art. 32 Establishment of SERV

- ¹ The assets and liabilities as well as the rights and duties pursuant to Article 39 paragraph 3(a) of the SERV Act are transferred as of 1 January 2007.
- ² By 30 September 2007, SERV shall submit the opening balance sheet as of 1 January 2007 to the Federal Council for approval.

Art. 33 Entry into force

This Ordinance enters into force on 1 January 2007.

²¹ [OC 1999 1543]

²² The amendments can be consulted under OC 2006 4403.

²³ [OC 1959 391, 1973 1024, 1978 1985, 1981 56, 1992 288 annex no. 63, 1996 2444. OC 2006 1801 Art. 37 para. 1]