

Information on the disclosure by SERV of protected information on export and financing transactions to third parties

Valid from 01.10.2022

1 Provisions for the protection of information

1.1 Official secrecy

Information provided to SERV¹ by the applicant or policyholder in the course of the application process or during the processing of an insurance transaction is subject to official secrecy (Art. 320 Swiss Criminal Code)² if

- a. the information is known only to a limited group of persons,
- b. the owner of the information does not wish to disseminate it (desire for confidentiality), as he/she has expressly or tacitly stated, and
- c. the owner of the information has a legitimate interest in maintaining its confidentiality (interest in confidentiality).

SERV may only disclose or pass on confidential information to third parties where there is a legal basis for doing so (Art. 14 Swiss Criminal Code). Alternatively, the superior authority to the disclosing authority may permit disclosure (Art. 320 par. 2 Swiss Criminal Code). Where the confidentiality of information is only or primarily of concern to a private individual or legal entity, the individual or legal entity concerned may also consent to its disclosure. In the case of information concerning an export or financing transaction disclosed to SERV during the application process for the purposes of concluding insurance or a guarantee and during the processing of the cover, confidentiality is primarily in the interests of the exporter, applicant or policyholder.

1.2 Data pertaining to legal entities

All data pertaining to an identified or identifiable legal entity constitute the personal data of that legal entity. Such data are protected with regard to processing by federal bodies³. They may only be disclosed in instances where there is enough legal justification to do so⁴. This justification can be found in constitutional, statutory or subordinate law or in international treaty law, which does not need to explicitly permit disclosure, but may give grounds for such disclosure in the course of the fulfilment of the institution's duties⁵.

Data pertaining to legal entities that is particularly worthy of protection is afforded further protection. This includes both professional, manufacturing and business secrets and data on criminal and administrative law prosecutions and sanctions⁶. Their disclosure requires a formal legal basis⁷.

¹ SERV Swiss Export Risk Insurance

² SCC Swiss Criminal Code (SR 311.0)

³ Articles 16 et seq. of the Data Protection Act of 19 June 1992 (**FADP**), which will apply until the entry into force of the fully revised Data Protection Act (expected on 1 September 2023). When the new data protection law enters into force, the protection of personal data of legal entities will be governed by Articles 57r et seq. of the Government and Administration Organisation Act (**GAOA** SR 175.010).

⁴ Art. 17 par. 1 FADP, from 1 September 2023 Art. 57s par. 1 GAOA.

⁵ In practice (see BSK-Ballenegger [2014], FADP 17 N 18), from 1 September 2023 explicitly Art. 57r par. 1 and Art. 57s par. 3 lit. a GAOA.

⁶ Art. 3 lit. c FADP, under which professional, manufacturing and business secrets are not considered to be especially protected personal data. From 1 September 2023 Art. 57r par. 2 GAOA.

⁷ Art. 17 par. 2 FADP, from 1 September 2023 Art. 57s par. 2 GAOA.

The data of legal entities may, however, always be disclosed if the legal entity concerned consents to the disclosure⁸.

2 Purpose of this information

When applying for and concluding an insurance policy or guarantee, SERV requires the exporter and, where applicable, the third party authorised by the exporter on the basis of SERVG⁹ 2 acting as the applicant or policyholder, to consent to the disclosure, to a specific group of recipients, of confidential information and protected data about the export and financing transaction (collectively '**protected information**') for which insurance has been granted or an application for insurance submitted.

This information provides guidance on the purpose and recipients of protected information in connection with the consent required by SERV from the exporter, applicant and policyholder.

3 Reasons for disclosure and recipients of protected information

3.1 Supervision

SERV is subject to the supervision of the Federal Council. Day-to-day supervision is performed by SECO¹⁰ in collaboration with the FFA¹¹ and the SDC¹². SERV provides these authorities with the information required to perform their supervisory role and to coordinate policies in SERV's scope of activity. This may also include protected information in specific cases.

3.2 Conclusion and processing of insurance and guarantee business

When concluding and processing insurance and guarantee transactions:

- a. SERV will verify the information provided by the exporter, applicant and policyholder to the extent it deems necessary;
- b. SERV may, if it so chooses, reinsure an insured transaction with a private insurance company or an export credit agency in another country and make use of insurance brokers to arrange the reinsurance transaction;
- c. SERV may coordinate its investigations, terms of cover, instructions, etc. with other credit insurers that are also involved in the export transaction or its financing;
- d. safeguard and enforce its claims against the exporter, the policyholder and third-party debtors (e.g. orderers).

In pursuance of the above, SERV may, in particular, consult other federal administrative bodies and external experts (e.g. risk analysts, sustainability experts, lawyers, collection agencies) and obtain information from credit agencies, debt collection agencies, international organisations and from the Internet, exchange information with other credit insurers or reinsurers and insurance brokers, or initiate debt collection proceedings and legal actions. In doing so, it may disclose the protected information necessary for this procedure to such third parties.

⁸ Art. 17 par. 22 lit. c FADP, from 1 September 2023 Art. 57s par. 3 lit. b GAOA.

⁹ SERVG Federal Act on the Swiss Export Risk Insurance

¹⁰ SECO Swiss State Secretariat for Economic Affairs

¹¹ FFA Federal Finance Administration

¹² SDC Swiss Agency for Development and Cooperation

3.3 International cooperation

3.3.1 *OECD*¹³

Switzerland is a member of the OECD and its Export Credit Group. SERV therefore applies the Arrangement on Guidelines for Officially Supported Export Credits (Export Credit Arrangement¹⁴) and the Recommendation of the Council on Common Approaches for Environmental and Social Due Diligence (“Common Approaches”)¹⁵. The OECD rules apply to export transactions with credit terms of more than two years.

The two instruments oblige SERV to provide the Secretariat of the OECD Export Credit Group with what is sometimes detailed information on individual export transactions. The Secretariat makes such information available to the countries participating in the Export Credit Group, to some degree also in aggregated form. This information, which includes protected information as well, is thus made available to a relatively large group of people – the OECD Secretariat and Member State delegations – but must be kept confidential by all recipients under OECD rules. This information is required to monitor and ensure compliance with the rules of the Export Credit Arrangement and the Common Approaches.

Export transactions that involve undesirable environmental and social impacts must be published on the SERV transparency list (<https://www.serv-ch.com/en/sustainability/project-information/>). The information SERV publishes exceeds the minimum information as set out in the Common Approaches. In some cases, the information must be published by SERV 30 days in advance of the insurance being granted. The transparency list is generally accessible and may contain protected information.

The sustainability aspects of pertinent export transactions are discussed as part of the technical dialogue involving sustainability experts from the participating state export credit agencies that take place under the auspices of the Export Credit Group. As a rule, no detailed information concerning protected information is provided on export transactions, but in some instances the information provided may be enough to draw conclusions about the specific export transaction. To the extent that transaction-specific information is provided, it must be treated confidentially in accordance with OECD rules.

3.3.2 *World Bank/International Monetary Fund*

The World Bank and the International Monetary Fund (IMF) pursue a lending policy whose aim is to provide sustainable lending to highly indebted poor countries (HIPC¹⁶). To achieve this objective, they provide or facilitate loans on preferential terms. Where loans are provided to such countries on commercial terms (non-concessional lending), the World Bank and the IMF aim to avoid any undermining of their sustainability policy.

In the case of export transactions financed by commercial credit (supplier or buyer credit) with debtors in countries where the World Bank and the IMF are pursuing their sustainable credit policy, SERV is therefore obliged to provide the World Bank with an array of information concerning the export transaction and its financing, which may also include protected information.

3.3.3 *Berne Union*

SERV is a member of the Berne Union¹⁷, an association under Swiss law that maintains an office in London, whose worldwide membership consists of public and private export credit and investment risk insurers. The

¹³ OECD Organisation for Economic Co-operation and Development (statute in SR 0.970.4)

¹⁴ Arrangement sur les crédits à l'exportation bénéficiant d'un soutien public = Arrangement on Officially Supported Export Credits

¹⁵ Recommandation du Conseil sur des approches communes concernant l'environnement et les crédits à l'exportation bénéficiant d'un soutien public (les “approches communes”) = Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the “Common Approaches”)

¹⁶ HIPC Heavily Indebted Poor Countries, a group of heavily indebted developing countries that are to benefit from debt relief under the HIPC Initiative of the World Bank and the IMF.

¹⁷ www.berneunion.org

Berne Union aims, inter alia, to exchange information and expertise on economic and political risks in export credit and investment risk insurance and related areas.

The information exchanged in the Berne Union consists primarily of aggregated figures regarding the credit exposure and payment practices of debtors broken down into specific categories. Information on individual export or financing transactions is generally not provided, but it is possible that industry experts may be able to draw conclusions about specific export transactions based on the information provided in some instances.

3.3.4 *Informal forums*

Information is also exchanged on sustainability issues and debt rescheduling topics in informal forums (D-A-CH export credit insurance, Stockholm Club). While this does not, in principle, involve any sharing of transaction-specific information, it is possible that industry experts may be able to draw conclusions about specific export transactions based on the information provided.

3.4 **Overriding interests**

SERV may supply information on export and financing transactions to enable academic studies and maintain bilateral foreign economic policy relations (country files).

The information provided for academic purposes may vary greatly in detail depending on the topic being researched but may also include protected information. SERV insists that the academics involved in compiling such studies maintain confidentiality. The results and methods used in such studies may be published, although only aggregated data may be used for this purpose, which means that readers will be unable to draw any conclusions about individual export or financing transactions.

Country files may contain key data on export transactions that are to be initiated, are ongoing or have been concluded. While these data may in some cases be protected information, they contain no detailed information on transactions. In particular, the country files are available to members of the federal administration responsible for trading and economic relations with the country in question. In addition, members of official economic delegations from the private sector may also have access to the country files.

3.5 Electronic processing of data

SERV is reliant on the support of external providers and experts for the electronic administration of insurance and guarantee transactions. It may therefore grant such providers, experts and their employees and agents' access to such protected information as is necessary for them to fulfil their roles, ensuring that appropriate measures are taken to prevent the further dissemination of this information.

4 **Further information**

Please do not hesitate to contact SERV in case of any additional questions that may arise after consulting this information: Compliance department (cman@serv-ch.com).