



Identifying risks and what to do in the event of losses

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Minimise risks. Maximise exports.

Content

1	Introduction	3
2	Identifying risks early	3
	Pre-loss management and what to do in the event of an imminent loss	3
	Policy holders' duties in the event of risk aggravating factors:	4
3	Claims processing and indemnification process	4
	Requirements for indemnification:	4
4	Recovery and claims management	5
5	Debt rescheduling and restructuring	6
6	Practical tips for policy holders.....	6
	Documentation and contract drafting.....	6
	What to do in the event of an imminent loss.....	7
	Indemnification request.....	7
	Barriers to and exclusion of indemnification	8
7	Cooperation as the key to success	8
	Recognise risks. Assume responsibility. For Swiss exports.....	8

1 Introduction

Swiss Export Risk Insurance SERV supports Swiss exporters with protecting themselves against risks in their international business. Events that lead to payment defaults may occur despite careful planning. This document tells you how to identify risks early, what to do in the event of a loss and how SERV supports you throughout the entire process – from prevention to claims handling and claims management.

2 Identifying risks early

Pre-loss management and what to do in the event of an imminent loss

SERV aims not just to provide protection against risks but also to identify them early and actively manage them. Risks may arise, for example, through geopolitical tensions, economic changes or health risks. Events such as these can interrupt payment processes, cause liquidity problems for debtors and lead to insolvency.

Pre-loss management is therefore a key component of SERV's approach. As soon as any risk aggravating factors occur, policy holders must inform SERV without delay. These include:

- Payment arrears of more than one month
- Extension request
- Signs of a general deterioration in the debtor's or guarantor's financial situation
- Initiation of restructuring, composition or liquidation proceedings
- Political or regulatory changes with a potential impact on payments

Policy holders must act as if no insurance existed. This means that they must take all reasonable and appropriate measures to prevent or limit loss. These include, for example, reminders, initiating legal proceedings or suspending deliveries. During this phase, SERV plays an advisory role and is available to clarify alternative courses of action (including legal options) and communicate with the debtor if required. In the event of an imminent loss, a rapid and structured approach is of crucial importance.

Policy holders' duties in the event of risk aggravating factors:

- Inform SERV immediately of the imminent loss in writing
- Continue or initiate all necessary and reasonable loss avoidance/mitigation measures
- Only provide further deliveries, services or payments after consulting with SERV
- Obtain SERV's consent and follow all its instructions

Close cooperation with SERV is essential in order to develop solutions together and prevent any insured event from occurring where possible.

3 Claims processing and indemnification process

If an insured event occurs despite all preventive measures having been taken, SERV will review the facts of the case together with your indemnification request and all associated evidence.

An insured event is defined as the occurrence of an insured risk and the expiry of the waiting period, which is one to three months depending on the product. The insured risks include:

- Economic risks (del credere risks)
- Political risks
- Transfer risks
- Force majeure risks

Requirements for indemnification:

- The insurance premium is paid in full.
- There is a legally valid, due and payable claim against the debtor.
- The debtor has no legitimate objections or defences.
- The claim is legally enforceable against the debtor in the debtor country.
- Loss avoidance/mitigation duties have been met.
- All reporting and cooperation requirements and any other duties have been fulfilled.
- The indemnification request must be submitted within two years of the insured event.

If the debtor has defences or objections against the insured claim, SERV can require judicial clarification of these.

Documents including contract documents, proof of despatch and payment, collateral and any other documents requested must be submitted with the indemnification request, depending on the product and the circumstances of the loss event. After a thorough assessment, SERV will prepare a claim assessment report in which it sets out whether the requirements for indemnity have been met, obtains internal approvals from the authorised party and generally pays the indemnity within 30 days of approval of the claim.

Upon payment, the claims against the debtor in the amount of the indemnity are transferred to SERV (subrogation).

4 Recovery and claims management

After payment of the indemnity, the recovery phase – the phase in which overdue amounts are recovered from the debtor – begins. The aim is to collect the debts as fully as possible and thus meet SERV's obligation of economic viability.

Possible measures:

- Reminder and debt collection procedures
- Realisation of securities
- Repayment agreements with the debtor
- Initiation of legal proceedings
- Out-of-court settlements
- Cooperation with international recovery agencies
- Diplomatic interventions in the case of public debtors

Challenges may arise as a result of different legal systems, unclear contract wordings, political instability or sanctions. Insolvency proceedings can also complicate the recovery of funds or make this impossible. In these cases, SERV relies on experience, instinct and international cooperation.

Even after payment of the indemnity, policy holders are required to actively cooperate on the enforcement of the claim and to take recourse, realisation and loss-mitigation measures. Recoveries from payments, realisations or other proceeds must be reported to SERV without delay and must be transferred to SERV in accordance with the clawback provisions.

5 Debt rescheduling and restructuring

Debt rescheduling is a special form of claims management. It occurs in connection with public debtors and mostly takes place in the course of an International Monetary Fund (IMF) programme.

Debt rescheduling generally takes place within the framework of international agreements in the group of official bilateral creditors (government creditors or their organisations such as export risk insurers) and in particular also the members of the Paris Club¹. Switzerland is a member of the Paris Club and is represented by a representative of the Swiss State Secretariat for Economic Affairs (SECO) and SERV, respectively.

The debts of public debtors or of private companies with a government guarantee may be eligible for debt rescheduling. As part of debt rescheduling, repayments may be deferred, due dates extended and interest rates adjusted, leading to a reduction in debt servicing obligations. Claims may also be waived. In addition to current debt rescheduling under the Common Framework², some older debt rescheduling is still ongoing.

As with government debt rescheduling, SERV can also make private restructuring agreements with private debtors/debtor groups.

The inclusion of the insured claim in rescheduling and restructuring agreements concluded by SERV has no impact on the scope of cover or policy holders' entitlement to indemnification.

In previous years, debt relief – another building block of claims management – has also been provided. It has mostly been provided as part of international initiatives such as the Heavily Indebted Poor Countries (HIPC) Initiative. Debts can be cancelled in part or in full under the initiative if certain criteria are met.

6 Practical tips for policy holders

To ensure that you receive the best possible support in the event of a loss and indemnification by SERV is not jeopardised, you should pay particular attention to the following points:

Documentation and contract drafting

- Ensure that all contractual terms are set out in writing, in full and in a legally binding manner. These include, in particular, terms of delivery, acceptance and payment, deadlines and provisions on choice of law and place of jurisdiction.
- Ensure that claims and collateral are legally valid and enforceable under the chosen law. Where required, it is advisable to obtain legal advice.
- Check at an early stage for regulations that may help with loss avoidance, for example through appropriate payment instruments (e.g. letters of credit), the conclusion of additional insurance policies (e.g. transport risks) and careful documentation of all relevant procedures.

¹ Further information: <https://clubdeparis.org>

² On 13 November 2020, after the expiry of the Debt Service Suspension Initiative, which suspended debt service payments from the poorest countries during the Covid-19 pandemic, an agreement between the G20, the Paris Club countries and a number of other creditor countries established a Common Framework for Debt Treatment for poorer countries.

- Monitor your export transaction carefully and regularly.

SERV does not check contract documents concerning the underlying transaction insured when it issues the policy or guarantee but only if an insured event occurs. The policy holders are responsible for any defects in the contract for the underlying transaction (known as documentation risk) and for the applicable law and agreed place of jurisdiction.

What to do in the event of an imminent loss

- Continue to take all reasonable measures to avoid or limit any loss.
- Inform SERV immediately or at an early stage of imminent losses and measures taken and planned in writing.
- Only provide further deliveries, services or payments subject to prior agreement from SERV.
- Obtain SERV's consent for the planned measures early on and follow any instructions issued by SERV.

Indemnification request

- Submit an indemnification request on SERV's claims portal or request the form for the indemnification request from SERV at an early stage.
- Please note that a statutory, non-extendable forfeiture period of two years applies after the occurrence of the insured event.
- Submit all evidence and documents relating to the claim and the loss with the request. This includes, in particular:
 - Contract documents, proof of despatch and payment, invoices and reminder letters
 - Documentation of agreed collateral and information on recourse to the collateral
 - Further documents requested by SERV depending on the product and the specific circumstances in a transaction

Barriers to and exclusion of indemnification

SERV can refuse indemnification in full or in part for reasons including:

- The insurance premium not having been paid,
- Policy holders not having fulfilled their duties to avoid or mitigate loss,
- Reporting or cooperation requirements not having been fulfilled,
- Necessary collateral not having been validly set up or not having been formally claimed in the correct way,
- Risk aggravating factors not having been reported or having been reported too late,
- The indemnification request having been received after the forfeiture period,
- Legal provisions (e.g. prohibitions on corruption) having been violated.

If the debtor makes legitimate objections to the claim or there are doubts about its legal validity or size, SERV may require proof to be provided through a judgement by a competent court or arbitration tribunal.

7 Cooperation as the key to success

Risks such as liquidity problems, unwillingness to pay or political instability cannot be completely avoided. Close cooperation between you and SERV is crucial for a successful outcome. This cooperation extends from early identification of risk aggravating factors to pre-loss management, claims processing and claims management.

Recognise risks. Assume responsibility. For Swiss exports.

SERV contributes its expertise in law, claims and loss management and works closely with exporters, banks and international partners. This cooperation is the basis for managing even complex risks and successfully enforcing claims.