
Disclaimer

This information gives banks and exporters an overview of key points regarding claims in connection with a SERV policy. The final assessment of each case is governed exclusively by the respective insurance policy or guarantee issued by SERV as well as the applicable provisions.

Conclusion and execution of the insured credit transaction

The policyholder must fully and accurately represent all circumstances material to the granting of cover under the insurance policy or guarantee. SERV must be notified immediately in writing of any changes to these circumstances, e.g. contract modifications or delays. Major changes to covered items require SERV's prior consent. The conclusion or execution of the transaction shall not violate Swiss or foreign laws.

To ensure that you have adequate proof of insured claims following a loss, we recommend always verifying the following when concluding and executing export and credit transactions:

- that the contract terms have been fully documented in writing, are binding under the law chosen by the parties, and contain clear terms (e.g. regarding delivery, acceptance and payment, deadlines, choice of law and jurisdiction);
- that the buyer posted collateral lawfully and any claims against the buyer are lawful so that the agreement can be enforced in the applicable jurisdiction under the applicable law if a loss occurs (it may help to obtain legal opinions when meeting registration obligations, for example);
- that provisions are made to avoid losses, e.g.
 - in the choice of payment instruments (e.g. letter of credit) and credit terms;
 - that customary insurance policies are concluded, especially against transport risks, the necessary reports and memos are prepared and the necessary documentation is maintained.

SERV does not review any contract documents when it issues an insurance policy or a guarantee. This is only done if an insured event occurs. The policyholder, in other words, bears the documentation risk.

Imminent loss

A loss is assumed to be imminent if the foreign party or a jointly liable third party materially breaches its obligations and there are circumstances leading to an increase in risk, i.e. if there is a greater probability that an insured risk will occur.

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 economic circumstances and negative reports on the debtor or jointly liable third party;
- placement of debtor or jointly liable third party into receivership or liquidation (debt restructuring moratorium, official settlement proceedings, bankruptcy, etc.).

The policyholder's main duties in case of an imminent loss are to:

- continue to take all reasonable measures, according to prevailing circumstances, to mitigate or prevent loss;
 - notify SERV in writing without delay, providing information about any past or planned action;
 - refrain from supplying goods and services without SERV's consent;
 - immediately obtain instructions from SERV on how to proceed.
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Insured and guaranteed event

An insured event is defined as the occurrence of an insured risk and the expiry of the waiting period described in the relevant GTC. The waiting period is three months for exporter insurance and one month for banking products from the inception of an insured risk.

A guaranteed event occurs when the conditions documented in the guarantee occur. There are no waiting periods in this case.

If a contract bond covered by a SERV counter guarantee is called, the exporter must refund the called amount to the bank providing the guarantee and cannot file a claim under SERV's contract bond insurance until the waiting period has expired.

The policyholder's main duties if an insured or guaranteed event occurs are to:

- fully and immediately inform SERV about the insured or guaranteed event that has occurred;
- take all reasonable measures, according to prevailing circumstances, to mitigate loss;
- follow SERV's directions.

Request for indemnification

The form for requesting indemnification can be obtained from SERV. A request for indemnification under art. 17 (1) SERV-V is subject to a limitation period of two years from the occurrence of the insured event. If a guaranteed event covered by SERV occurs, the guarantee holder merely has to contact SERV in writing within the period specified in the guarantee document, enclosing the documents specified in the guarantee.

The indemnification request must include the following:

- any and all claim-related proof and documents (e.g. contract documentation, shipping documents, invoices, payment documentation, demand notes etc.);
 - documentation of stipulated collateral and claim details;
 - any other documents requested by SERV.
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Obstacles to and exclusion of 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;

- 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.

If a third party is jointly liable, these requirements must also be proven with regard to the third party. Proof of the collateral documented in the insurance policy must be presented.

The policyholder must also prove that it met its obligations, especially as regards loss prevention or mitigation. If SERV finds that the policyholder materially breached these obligations after a claim is filed, SERV may refuse to pay all or part of the indemnification based on the individual circumstances.

Examples of possible material breach of obligations:

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

No indemnification at all will be paid if SERV determines that cover would not have been granted at all, or not to the same extent, if the policyholder had behaved properly. The foregoing also applies if a loss was caused by the policyholder's breach or neglect of duty. No indemnification will be paid if the SERV premium has not been paid or if the conclusion or execution of the insured transaction violated Swiss or foreign laws (e.g. corruption).

Indemnification

Indemnification is paid within 30 days of SERV's written approval of a claim. The policyholder or the beneficiary of the guarantee will pay any costs for payment to an account located outside Switzerland.

Indemnification is paid in the currency documented in the guarantee or insurance contract. Amounts are converted to CHF in accordance with the applicable SERV General Terms and Conditions.

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. If rights cannot be transferred under applicable law or if SERV does not initially require rights to be transferred in a particular case, the policyholder must maintain the rights for SERV as part of its loss mitigation obligation.

The policyholder's responsibility for taking measures to recover assets or mitigate losses is unaffected by any transfer of rights. SERV dictates all subsequent recourse and loss mitigation measures for the entire claim, taking account of uninsured receivables in debt rescheduling and restructuring actions.

Loss mitigation measures (recovery)

Even after an insured risk occurs, the policyholder must take all reasonable and appropriate measures under the circumstances to mitigate further losses and enforce the defaulted debt.

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;

Any action, e.g. retaining a local attorney, is always taken in consultation and by the instructions of SERV. SERV must be kept apprised at all times.

Costs for loss mitigation measures incurred after an insured event acknowledged by SERV occurs or incurred with SERV's consent are split between SERV and the policyholder in proportion to the scope of cover.

Recovery procedures

After the indemnification is paid, the policyholder must immediately notify SERV of any incoming payments or any payments that are eligible for set-off under the GTC applicable to the insurance contract, any realisation or enforcement proceeds, or other pecuniary gains received in connection with the insured event (recoveries), and must transfer to SERV a portion of these amounts in proportion to the cover ratio.
