

# Prevention of Corruption in Connection with SERV's Insurance products

Version 3.0, as of 1 November 2019

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



---

## 1. Formal requirement of anti-corruption declarations

The Swiss Export Risk Insurance ("SERV") is the official export credit agency (ECA) of Switzerland. SERV promotes responsible business conduct among parties involved in applications for official export credit support. SERV abides by and is committed to the "OECD Recommendation on Bribery and Officially Supported Export Credits (2006)" which was since updated by the "OECD Recommendation on Bribery and Officially Supported Export Credits (2019)." Pursuant to the OECD international agreement any SERV insurance cover application shall contain a so-called anti-corruption declaration in the relevant SERV standard form. Such anti-corruption declaration shall be provided and signed by the applicant as well as on SERV's request, by other relevant party/ies. Thus, if the applicant is a bank then in general SERV additionally requires an anti-corruption declaration by the exporter such as is in the case for a buyer credit insurance. Further, if the application involves a joint venture/consortium then in general SERV requires anti-corruption declarations by all relevant parties thereof. Such anti-corruption declarations incorporate provisions of the OECD international agreement and constitute a material and integral part of SERV's formal application requirements.

---

## 2. General duty of disclosure

In this regard, please note that the applicant for SERV insurance and insured respectively is under a duty to fully and correctly disclose to SERV all circumstances necessary and material to the screening of the application and, if relevant, to any subsequent enhanced due diligence and to the acceptance of insurance as well as entitlements to indemnity and to further notify SERV of any changes of such circumstances without delay (Art. 16 of the Swiss Export Risk Insurance Act, Art. 8 of the Federal Ordinance on the Swiss Export Risk Insurance).

Relevant changes of circumstances are for example

- a) if formal investigations for violation of bribery laws were initiated or convictions in any court for violation of laws against bribery occurred and therefore the confirmations in the declaration are no longer complete and/or accurate or
- b) if the nature of the underlying transaction undergoes such material change that it is in effect an entirely different transaction (e.g. a switch to a different foreign export contract partner).

In the latter case, a new anti-corruption declaration must be provided. However, an extension of the insurance cover duration due to a delay in the underlying transaction would generally be covered by the initial anti-corruption declaration.

---

## 3. Enhanced due diligence in individual cases

SERV has to evaluate the information provided in the application form, the anti-corruption declarations provided in accordance with the OECD Recommendation and any due diligence already undertaken with a view whether to undertake enhanced due diligence of a transaction or a party involved in a transaction if, for example, there is an increased risk of bribery or there is reason to believe that bribery may be involved in the transaction, SERV requires additional information to allay any suspicions of bribery.

Enhanced due diligence measures could depending on the individual circumstances of a case include, for example:

- a) verifying whether appropriate internal corrective and preventative measures have been taken, maintained, documented, such as, where appropriate, replacing individuals that have been involved in bribery, adopting appropriate anti-bribery management control systems, submitting to an audit, making the results of such periodic audits available, etc.;
  - b) verifying and noting whether additional parties involved in a transaction are listed on the publicly available debarment lists of one of the multilateral financial institutions;
  - c) where such information has not already been demanded during application screening and due diligence, requiring, upon demand, the disclosure of: (i) the identity of any natural or legal person, such as agents, acting on behalf of the exporter and, where appropriate, other relevant parties in connection with the transaction; (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons; and (iii) the country or jurisdiction in which the commissions and fees have been paid, or agreed to be paid;
  - d) verifying whether the level of commissions and fees paid, or agreed to be paid, the purpose of such commissions and fees, and the location of such payments, appear appropriate and for legitimate services only;
  - e) extending due diligence to other parties involved in a transaction, including, for example, joint ventures and consortia partners, and requesting information about the beneficial ownership and financial condition of any of the transaction parties;
  - f) requesting an extended anti-corruption declaration in the form provided by SERV for enhanced due diligence to be given and signed.
- 

#### **4. Process upon evaluation of declarations, due diligence or enhanced due diligence**

SERV will evaluate the information resulting from the declarations, screening, due diligence and/or enhanced due diligence and depending thereupon will take appropriate measures, which may include – but not limited to – any or more of the following:

- Decide to stop the processing of application until enhanced due diligence process is finished.
  - Decide, in the event that support is provided, whether this should involve conditions to fulfil prior to, or after, the final commitment for official support (e.g. explicit condition to be informed of any material changes to the declarations).
  - Refuse to provide official export credit support, if it concludes that bribery was involved in the transaction and/or if the declarations are not provided.
  - In case payment was made, require indemnification or refund of sums provided, if regarding the transaction one of the parties involved was convicted of violation of laws against bribery, subject to equivalent measures, or found as part of a publicly-available arbitral award to have engaged in bribery.
  - Inform law enforcement authorities provided there is sufficient indication/evidence per applicable law and jurisdiction that bribery was involved in the award or execution of the export contract.
- 

#### **5. Prevention of corruption**

The brochure “Preventing corruption – Information for Swiss businesses operating abroad”, published by the Swiss State Secretariat for Economic Affairs SECO, provides Swiss businesses operating abroad with valuable information about the corruption problem, the relevant criminal offences under Swiss law and jurisdiction as well as advice on prevention measures against corruption.

[https://www.seco.admin.ch/seco/en/home/Publikationen\\_Dienstleistungen/Publikationen\\_und\\_Formulare/Aussenwirtschafts/broschueren/korruption\\_vermeiden.html](https://www.seco.admin.ch/seco/en/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/broschueren/korruption_vermeiden.html)

Applicant exporters and other relevant parties should maintain and document an appropriate compliance management system to avoid and detect corruption.

---

## **6. Legal information**

For insurance to be granted and subsist applicable Swiss and foreign law including anti-corruption law must be complied with in connection with the conclusion and performance of the underlying transaction/export contract in relation to which insurance cover is requested under this application. In this regard, please take note of the following provisions in the Swiss Criminal Code and other relevant Swiss statutes with respect to bribery.

### **Relevant provisions of the Swiss Criminal Code (SCC, SR 311.0):**

#### **Art. 102 – Liability under the criminal law**

<sup>1</sup> If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking is liable to a fine not exceeding 5 million francs.

<sup>2</sup> If the offence committed falls under Articles 260ter, 260quiquies, 305bis, 322ter, 322quiquies, 322septies paragraph 1 or 322octies, the undertaking is penalised irrespective of the criminal liability of any natural persons, provided the undertaking has failed to take all the reasonable organisational measures that are required in order to prevent such an offence.

<sup>3</sup> The court assesses the fine in particular in accordance with the seriousness of the offence, the seriousness of the organisational inadequacies and of the loss or damage caused, and based on the economic ability of the undertaking to pay the fine.

<sup>4</sup> Undertakings within the meaning of this title are:

- a) any legal entity under private law;
- b) any legal entity under public law with exception of local authorities;
- c) companies;
- d) sole proprietorships.

#### **Art. 322ter – Bribery of Swiss public officials / Bribery**

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces an undue advantage, or offers, promises or gives such an advantage to a third party in order to cause the public official to carry out or to fail to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 322quater – Bribery of Swiss public officials / Acceptance of bribes**

Any person who as a member of a judicial or other authority, as a public official, officially-appointed expert, translator or interpreter, or as an arbitrator demands, secures the promise of or accepts an undue advantage for that person or for a third party in order that he carries out or fails to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 322quinquies – Bribery of Swiss public officials / Granting an advantage**

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator or a member of the armed forces an undue advantage for that person or for a third party in order that the person carries out his official duties is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 322sexies – Bribery of Swiss public officials / Acceptance of an advantage**

Any person who as a member of a judicial or other authority, as a public official, officially-appointed expert, translator or interpreter, or as an arbitrator, demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that he carries out his official duties is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 322septies – Bribery of foreign public officials**

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces who is acting for a foreign state or international organisation an undue advantage, or gives such an advantage to a third party, in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion, any person who as a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces of a foreign state or of an international organisation demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that he carries out or fails to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion is liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 322octies – Bribery of private individuals**

<sup>1</sup> Any person who offers, promises or gives an employee, partner, agent or any other auxiliary of a third party in the private sector an undue advantage for that person or a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> In minor cases, the offence is only prosecuted on complaint.

### **Art. 322novies – Bribery / Accepting bribes**

<sup>1</sup> Any person who as an employee, partner, agent or any other auxiliary of a third party in the private sector demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> In minor cases, the offence is only prosecuted on complaint.

### **Art. 322decies – General provisions**

<sup>1</sup> The following are not undue advantages:

- a) advantages permitted under public employment law or contractually approved by a third party;
- b) negligible advantages that are common social practice.

<sup>2</sup> Private individuals who fulfil official duties are subject to the same provisions as public officials.

### **Relevant provisions of the Swiss Export Risk Insurance Act (SERVG, SR 46.10):**

#### **Art. 36**

<sup>1</sup> Imprisonment of up to one year or a fine will be awarded to persons who deliberately:

- a) effect the conclusion of an insurance or payments thereunder for themselves or to the benefit of others through incorrect or incomplete information;
- b) evade the obligation to deliver or the refund obligation pursuant to Article 19 paragraph 2 second sentence and Article 20 through incorrect or incomplete information;
- c) fail to comply with their obligations to avoid losses pursuant to Article 16 paragraph 2;
- d) fail to comply with their obligations to support SERV in the collection or utilisation of undelivered export goods pursuant to Article 19 paragraph 2 first sentence.

<sup>2</sup> Offences committed abroad are also punishable.

<sup>3</sup> Criminal prosecution on the basis of the special provisions of the Criminal Code is reserved in any cases.

<sup>4</sup> The cantons are in charge of the criminal prosecution. All judgements and decisions to discontinue any case shall be notified to the Federal Attorney General in full and without delay.

### **Bribery provision of the Swiss Federal Unfair Competition Act (UCA, SR 241):**

#### **Art. 4a UCA – Offering and accepting bribes**

<sup>1</sup> A person shall be deemed to be acting unfairly if he/she,

- a) offers, promises or grants an undue advantage to an employee, a partner, a representative or other assistant of a third party in the private sector in connection with their official activity, in return for an act or omission to his/her benefit or to the benefit of a third party that is in breach of their duty or at their discretion;
- b) as employee, partner, representative or other assistant of a third party in the private sector, asks for, obtains the promise of or accepts in connection with his/her official or commercial activity an

undue advantage for him/herself or a third party for an act or omission that is in breach of his/her duty or at his/her discretion.

<sup>2</sup> Advantages approved contractually by the third party, as well as minor favours customary in society shall not be deemed to be undue advantages.