

## **Federal Act on the Swiss Export Risk Insurance**

(Export Risk Insurance Act, SERVG)

Of 16 December 2005 (as of 1 January 2016)

Federal Act 946.10

Unofficial, not legally binding translation of the German text

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The Federal Assembly of the Swiss Confederation, based on Article 100 paragraph 1 and Article 101 paragraph 1 of the Federal Constitution<sup>1</sup>, upon examination of a Communication of the Federal Council of 24 September 2004<sup>2</sup>, resolves:

## **Section 1: General Provisions**

### **Art. 1 Subject Matter**

This act governs the tasks, the services and the organisation of the Swiss Export Risk Insurance (SERV).

### **Art. 2 Definitions**

The following terms are used in this act:

- a) Policyholder: Exporting party or a third party authorised by it, which concludes the insurance;
- b) Orderer: Party that places the order and concludes a contract for this purpose;
- c) Guarantor: Party that secures the claim of the policyholder against the orderer by means of a guarantee;
- d) Debtor: Orderer, guarantor or any other party against which the policyholder has legal claims;
- e) Sovereign debtor: Foreign government or organisation under public law, especially one that is not subject to bankruptcy law, against which the policyholder has legal claims;
- f) Private debtor: Any natural or legal person who is not a sovereign debtor as per letter e and against whom the policyholder has legal claims.

### **Art. 3 Legal Form**

<sup>1</sup> SERV is an institution under public law with its own legal personality.

<sup>2</sup> It is independent in its organisation and management and keeps its own accounts.

### **Art. 4 Export Risk Insurance**

SERV offers an insurance against export risks in accordance with this act.

### **Art. 5 Objectives**

By means of SERV, the Confederation pursues the following objectives:

- a) creation and preservation of jobs in Switzerland
- b) promotion of Switzerland as a business location by facilitating the participation of exporters in international competition.

### **Art. 6 Principles of Business Policy**

<sup>1</sup> SERV:

- a) works as an economically viable insurance for sovereign and private risks;
- b) allocates the risks of sovereign and private debtors to separate accounts (segment accounting); risk compensation between the segments is possible temporarily;
- c) charges risk-oriented premiums in individual cases;
- d) offers its insurances as a supplement to private sector solutions;
- e) provides internationally competitive services.

<sup>2</sup> It takes into account the principles of Swiss foreign policy.

<sup>1</sup> CC 101

<sup>2</sup> OJ 2004 5795

**Art. 7 Conclusion of Contracts Under International Law and Representation in International Organisations**

- <sup>1</sup> Within its competence, the Federal Council may conclude debt rescheduling agreements for claims of SERV<sup>3</sup>.
- <sup>2</sup> The Federal Council may authorise SERV to represent the Confederation in international organisations and associations in matters related to export risk insurance.

**Art. 8 Cooperation and Participations**

- <sup>1</sup> To fulfil its tasks, SERV may cooperate with public or private organisations, or establish or participate in companies.
- <sup>2</sup> SERV may conclude reinsurance agreements with public or private export credit agencies for export transactions with goods of Swiss origin or involving adequate Swiss content. The reinsurance may be granted according to the insurance conditions of the direct insurance, provided the transaction is compatible with the objectives of this Act and the principles of the business policy of SERV.<sup>4</sup>

**Art. 9 Delegation of Tasks to Third Parties**

SERV may delegate tasks of processing the insurance to third parties.

**Art. 10 Other Tasks**

- <sup>1</sup> The Federal Council may delegate further tasks regarding foreign trade to SERV.
- <sup>2</sup> It duly compensates such services.

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**Section 2: Conclusion and Implementation of the Insurance Transaction****Art. 11 Insurance**

- <sup>1</sup> SERV insures deliveries and services to another country (export transactions) against payment arrears or other losses from claims against sovereign or private debtors.
- <sup>2</sup> In an ordinance, the Federal Council determines the details of the subject, conclusion and implementation of the insurance transaction within the scope of the following provisions.

**Art. 12 Insurable Risks**

- <sup>1</sup> The following risks are insurable:
  - a) political risks;
  - b) transfer risks and payment moratoriums;
  - c) force majeure;
  - d) the payment risk, if the policyholder also insures the risks of loss pursuant to letters a to c with SERV;
  - e) <sup>5</sup>counter guarantee risks;
  - f) foreign currency risks in insured events related to risks pursuant to letters a to e (foreign currency contingency risk).
- <sup>2</sup> The risks listed in paragraph 1 are insurable if occurred before or after delivery.

**Art. 13 Conditions for the Conclusion of an Insurance**

<sup>3</sup> Version pursuant to Article 1 of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2271; OJ 2014 4057).

<sup>4</sup> Inserted by clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057).

<sup>5</sup> Version pursuant to clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057)

<sup>1</sup> An insurance may be concluded if:

- a) the exporter is domiciled in Switzerland and listed in the Commercial Register;
- b) the export transaction concerns goods and services of Swiss origin or with adequate Swiss content;
- c) the orderer's registered office or official domicile is abroad; and
- d) the export transaction to be insured is compatible with the principles of the business policy pursuant to Article 6.

<sup>2</sup> An insurance is excluded if:

- a) the risk situation makes it impossible to grant the insurance;
- b) the export transaction to be insured would breach Swiss or foreign regulations; or
- c) the export transaction to be insured breaches Switzerland's commitments under international law.

#### **Art. 14 Premium**

<sup>1</sup> SERV charges a premium to the policyholder.

<sup>2</sup> The premium is calculated primarily under consideration of the respective risks, amount and term of the insurance.

#### **Art. 15 <sup>6</sup>Conclusion of the Insurance**

<sup>1</sup> SERV usually grants the insurance by issuing a public-law order. It may also conclude a contract under public law, in order to protect the interests of SERV.

<sup>2</sup> There is no legal entitlement to the conclusion of an insurance.

<sup>3</sup> If SERV refuses to conclude an insurance, it will issue a contestable order which may be subject to appeal.

#### **Art. 16 Duty to Inform and Due Diligence**

<sup>1</sup> Any party that intends to conclude or has concluded an insurance must provide the information required for the evaluation of the export transaction and the processing of the insurance transaction and must have such information reviewed by SERV.

<sup>2</sup> The party must take all measures that due to the circumstances become necessary to avoid a loss.

#### **Art. 17 Indemnification**

<sup>1</sup> If a defaulted debt or a loss is reported, SERV will pay the portion of the proven loss or arrears as set out in the insurance.<sup>7</sup>

<sup>2</sup> The insurance covers a maximum of 95 percent of the insured amount. The Federal Council determines the maximum rates of the insurance cover pursuant to the risks taken and debtors involved.

#### **Art. 18 Exclusion of Indemnification**

Indemnification is excluded cancelled or reduced if:

- a) an insurance has been concluded on the basis of false information;
- b) <sup>8</sup>the policyholder is in breach of the terms and conditions of the insurance or responsible for losses due to the breach of contract with the debtor;

<sup>6</sup> Version pursuant to clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057).

<sup>7</sup> Version pursuant to clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057).

<sup>8</sup> Version pursuant to clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057).

- c) the policyholder is responsible for losses due to subsequent agreements with the debtor, which limit its rights or prevent or delay the payment of the debt.

#### **Art. 19 Insured Event**

- <sup>1</sup> In an insured event, the defaulted claim including auxiliary rights and the ownership of the undelivered export goods shall pass over to SERV to the extent of its payment.
- <sup>2</sup> Upon occurrence of the insured event, the policyholder shall support SERV in collecting the claim and sell undelivered export goods at the best possible price. It shall remit incoming payments or proceeds on a pro rata basis to SERV without being prompted to do so.

#### **Art. 20 Reimbursement Obligation**

- <sup>1</sup> Should it subsequently emerge that the conditions for indemnification by SERV had not been met, the policyholder shall refund the amount received plus default interest pursuant to Article 104 of the Code of Obligations<sup>9</sup>.
- <sup>2</sup> The policyholder shall be liable to make such refund even if the amount has been paid out to a third party.

#### **Art. 21 Assignment of the Insurance**

With the consent of SERV, the policyholder may assign the insurance along with its claim to a third party.

#### **Art. 21a <sup>10</sup>Working Capital Insurance**

- <sup>1</sup> If a financial institution grants an exporter a loan to finance the working capital for the provision of its services related to an export transaction, SERV may insure the exporters' payment obligation towards the financial institution, provided the respective export transaction is insured by SERV.
- <sup>2</sup> If SERV has indemnified the financial institution, the exporter shall fully reimburse SERV plus interest and cost.
- <sup>3</sup> The general provisions on the conclusion and the processing of the insurance transaction shall apply.

#### **Art. 21b <sup>11</sup>Guarantee**

- <sup>1</sup> If a financial institution issues a counter guarantee related to an export transaction insured by SERV, SERV may assure to the financial institution that it will fully repay, upon first demand, the amount disbursed as a result of a claim under the counter guarantee, in the event that the financial institution does not receive cover from the exporter (Counter Guarantee).
- <sup>2</sup> If a loan is taken out to finance the orderer's obligations arising from an export transaction insured by SERV and if the loan provider refinances this loan with a third party, SERV may assure the third party that it will fully repay the outstanding amount on first demand, if the loan provider or debtor fails to make payments when due (Refinancing Guarantee).
- <sup>3</sup> If SERV has made a payment, the policyholder shall fully reimburse SERV plus interest and cost.
- <sup>4</sup> The provisions on the conclusion and the processing of the insurance transaction shall apply mutatis mutandis.

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### **Section 3: Organisation and personnel**

<sup>9</sup> CC 220

<sup>10</sup> Inserted by clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057).

<sup>11</sup> Inserted by clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057).

**Art. 22 Organs**

<sup>1</sup> Organs of SERV:

- a) the board of directors;
- b) the CEO;
- c) the auditors.

<sup>2</sup> The board of directors and the auditors are elected by the Federal Council. The members of the board of directors are appointed for a period of four years.

<sup>3</sup> The Federal Council may remove the appointed organs for important reasons.

**Art. 23 Responsibilities**

<sup>1</sup> The responsibility provisions of corporate law (Art. 752 to 760 of the Code of Obligations<sup>12</sup>) apply mutatis mutandis to the responsibilities of the members of the organs of SERV. The Responsibility Act of 14 March 1958<sup>13</sup> shall not apply.

<sup>2</sup> Disputes concerning the responsibility of the members of the organs shall be settled by the civil courts. In such proceedings, the Swiss Confederation shall have the role of a shareholder and creditor of the company.

**Art. 24 Board of Directors**

<sup>1</sup> The board of directors consists of seven to nine members. The social partners shall be duly taken into consideration.

<sup>2</sup> The Federal Council appoints the chairman or chairwoman.

<sup>3</sup> The board of directors:

- a) elects the CEO;
- b) issues the internal rules of procedure;
- c) approves the planning and the budget;
- d) ensures the implementation of the strategic goals of the Federal Council;
- e) prepares the financial statements and the annual report and publishes them after approval by the Federal Council;
- f) decides on the conclusion of insurances subject to the responsibilities of the Swiss Federal Council pursuant to Article 34;
- g) issues the premium tariff, subject to the approval of the Federal Council;
- h) issues the personnel regulations, subject to the approval of the Federal Council;
- i) determines the risk policy;
- j) performs further tasks according to the internal rules of procedure.

<sup>4</sup> The board of directors may delegate the authority to conclude insurances within the scope of the applicable risk policy to the CEO.

<sup>5</sup> Article 6a paragraphs 1 to 5 of the Federal Personnel Act of 24 March 2000<sup>14</sup> shall apply mutatis mutandis to the compensation of the members of the board of directors and to other contract terms agreed with these persons.

**Art. 25 CEO**

The CEO:

- a) is responsible for the management unless the board of directors is responsible;
- b) organises and manages SERV;

<sup>12</sup> CC 220

<sup>13</sup> CC 170.32

<sup>14</sup> CC 172.220.1



- c) employs the personnel of SERV;
- d) represents SERV externally and in the organisations pursuant to Article 7 paragraph 2.

#### **Art. 26 Auditors**

<sup>1</sup> The auditors review:

- a) the accounting and the annual financial statements;
- b) the economic viability as presented by the board of directors.

<sup>2</sup> The auditors report audit findings to the Board of Directors and the Federal Council.

#### **Art. 27 Personnel**

<sup>1</sup> The personnel of SERV are employed pursuant to the Code of Obligations<sup>15</sup>.

<sup>2</sup> In its personnel policy, SERV takes into account Articles 4 and 5 of the Federal Personnel Act of 24 March 2000<sup>16</sup>.

<sup>3</sup> Article 6a paragraphs 1 to 5 of the Federal Personnel Act of 24 March 2000 shall apply mutatis mutandis to the salary of the CEO and of the members of the executive staff and the other personnel who receive similar salaries and to other contract terms agreed with these persons.

#### **Art. 27a <sup>17</sup>Duty to Report, Right to Report and Protection**

<sup>1</sup> Members of the organs and the personnel of SERV shall report all crimes or offences that are to be prosecuted ex officio, and which they become aware of during their official activity or that are reported to them to the criminal prosecution authorities, to their supervisors, to the Board of Directors or to the Federal Financial Audit Office.

<sup>2</sup> Duties to report under other Federal laws are reserved.

<sup>3</sup> The duty to report is not applicable to people who have a right of refusal to give evidence or to testify as per Articles 113 paragraph 1, 168 and 169 of the Swiss Criminal Procedure Code<sup>18</sup>.

<sup>4</sup> The members of the organs and the personnel of SERV are entitled to report other irregularities, which they become aware of during their official activity or that are reported to them to their supervisors, to the Board of Directors or to the Federal Financial Audit Office. The recipient of such a notification will establish the facts of the case and take necessary measures.

<sup>5</sup> Anyone filing a report or testifying in good faith must not be discriminated against in his professional status.

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### **Section 4: Finance**

#### **Art. 28 Treasury**

<sup>1</sup> To ensure its ability to fulfil its financial obligations within the scope of the fulfilment of its tasks pursuant to Articles 4 and 11, the Swiss Confederation grants SERV loans at market rates.

<sup>2</sup> SERV deposits surplus funds with the Swiss Confederation at market rates.

<sup>3</sup> The particulars are regulated in an agreement between SERV and the Federal Financial Administration.

#### **Art. 29 Accounting**

<sup>1</sup> The accounting of SERV presents its assets, financial and earnings position in the form of

<sup>15</sup> CC 220

<sup>16</sup> CC 172.220.1

<sup>17</sup> Inserted by clause I of the Federal Act of 12 December 2014, in force since 1 January 2016 (OC 2015 2217; OJ 2014 4057).

<sup>18</sup> CC 312.0

segment accounting.

- <sup>2</sup> For insurance transactions that cover the payment risk of private debtors, the result is presented separately.
- <sup>3</sup> It observes the general principles of materiality, comprehensibility, continuity and gross presentation and is based on the generally accepted standards.
- <sup>4</sup> The accounting and valuation rules that are derived from the accounting principles must be disclosed.
- <sup>5</sup> The Federal Council may enact accounting regulations for SERV.

#### **Art. 30      Taxes**

SERV is exempted from taxation by the Swiss Confederation, cantons and municipalities, with the exception of the following federal taxes:

- a) value-added tax;
- b) withholding tax.

#### **Art. 31      Debt Rescheduling and Restructuring**

- <sup>1</sup> Insured claims may, including the uncovered share of the total claim, be included in the full amount in debt rescheduling with sovereign debtors and in restructuring with private debtors.
- <sup>2</sup> This does not result in a loss of the right to be indemnified.
- <sup>3</sup> Following rescheduling or restructuring, SERV may acquire the uninsured share of the claim from policyholders against compensation.
- <sup>4</sup> If the Swiss Confederation, within the scope of debt rescheduling and restructuring, pursues objectives and tasks that are not based on this Act, SERV shall be compensated for the costs incurred.
- <sup>5</sup> The Federal Council determines the particulars.

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### **Section 5: Protection of Interests of the Swiss Confederation**

#### **Art. 32      Supervision**

- <sup>1</sup> SERV is subject to the supervision of the Federal Council.
- <sup>2</sup> The legal competences of the Federal Financial Audit Office and the superintendence of the parliament are reserved.

#### **Art. 33      Strategic Goals and Scope of Obligations**

- <sup>1</sup> The Federal Council determines the strategic goals of SERV for four years and reviews them periodically.
- <sup>2</sup> It determines the maximum scope of the insurance obligations.

#### **Art. 34      Insurances of Particular Significance**

At the request of the Federal Department of Economic Affairs, Education and Research (EAER)<sup>19</sup>, the Federal Council may give SERV instructions concerning the insurance of an export transaction of particular significance.

<sup>19</sup> Expression pursuant to clause I 35 of the Ordinance of 15 June 2012 (Reorganisation of the Departments), in force since 1 January 2013 (OC 2012 3655). This amendment was taken into consideration in the entire enactment.

**Art. 35 Evaluation**

SERV and EAER shall ensure that the achievement of the objectives formulated in this Act and the compliance with principles of the business policy pursuant to Article 6 are periodically evaluated.

**Section 6: Penal Provisions****Art. 36**

<sup>1</sup> Who wilfully and intentionally:<sup>20</sup>

- a) induces the conclusion of an insurance or payments of such on behalf of themselves or others through incorrect or incomplete information;
- b) evades the forwarding or refund obligations pursuant to Article 19 paragraph 2 second sentence, and Article 20, through incorrect or incomplete information;
- c) fails to comply with their obligations to avoid losses pursuant to Article 16 paragraph 2;
- d) fails to comply with their obligations to support SERV with the collection or liquidation of undelivered export goods pursuant to Article 19 paragraph 2 first sentence,
- e) shall be punished with imprisonment of up to one year or monetary fine.

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

<sup>3</sup> Criminal prosecution on the basis of the special provisions of the Penal Code<sup>21</sup> is reserved in any cases.

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

**Section 7: Final Provisions****Art. 37 Art. 37 Repeal and amendment of previous law**

<sup>1</sup> The Federal Act of 26 September 1958<sup>22</sup> on the Export Risk Guarantee is repealed.

<sup>2</sup> ...<sup>23</sup>

**Art. 38 Provisional Regulations**

<sup>1</sup> Guarantees granted before the entry into force of this Act will continue to be handled on the basis of the Federal Act of 26 September 1958<sup>24</sup> on the Export Risk Guarantee.

<sup>2</sup> Paragraph 1 also applies to guarantee commitments in principle, provided such confirmations were not made subject to the new law.

**Art. 39 Establishment of SERV**

<sup>1</sup> Upon entry into force of this Act, SERV gains its own legal personality. It supersedes the Fund of the Export Risk Guarantee.

<sup>2</sup> It takes over the assets and liabilities of the fund as well as the rights and obligations of the current Export Risk Guarantee (ERG) pursuant to the Federal Act of 26 September 1958<sup>25</sup> on the Export Risk Guarantee.

<sup>3</sup> The Federal Council takes the following measures:

<sup>20</sup> Version pursuant to Article 333 of the Penal Code (CC 311.0) in the version of the Federal Act of 13 December 2002, in force since 1 January 2007 (OC 2006 3459; OJ 1999 1979).

<sup>21</sup> CC 311.0

<sup>22</sup> [OC 1959 391, 1973 1024, 1978 1985, 1981 56, 1992 288 Annex no. 63, 1996 2444]

<sup>23</sup> The amendment can be viewed under OC 2006 1801.

<sup>24</sup> [OC 1959 391, 1973 1024, 1978 1985, 1981 56, 1992 288 Annex no. 63, 1996 2444]

<sup>25</sup> [OC 1959 391, 1973 1024, 1978 1985, 1981 56, 1992 288 Annex no. 63, 1996 2444]

- a) It determines the time of transfer of the assets and liabilities and of the rights and obligations.  
The transfer and necessary registrations are free of taxes and charges.
- b) It approves the inventory of the liabilities, assets, rights and obligations to be taken over and any ancillary obligations, conditions and restrictions.
- c) It approves the opening balance sheet of SERV.
- d) It takes all other measures necessary for the transfer.

**Art. 40      Transfer of Employment Contracts**

The employment contracts of the employees of the previous ERG office pass over to SERV as of the entry into force of this Act. The appointment of the CEO pursuant to Article 24 paragraph 3 letter a of this Act and Article 333 of the Code of Obligations<sup>26</sup> is reserved.

**Art. 41      <sup>27</sup>**

**Art. 42      Referendum and Entry into Force**

<sup>1</sup> This Act is subject to the optional referendum.

<sup>2</sup> The Federal Council determines the entry into force.

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Date of entry into force<sup>28</sup> 1 January 2007

Art. 3 and 22 to 27: 1 June 2006

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OC      Official Compilation of the Federal Law  
CC      Classified Compilation of the Federal Law  
OJ      Official Journal of the Swiss Confederation

<sup>26</sup> CC 220

<sup>27</sup> Repealed by clause I of the Federal Act of 12 December 2014, with effect from 1 January 2016 (OC 2015 2217; OJ 2014 4057).

<sup>28</sup> Resolution of the Federal Council of 12 April 2006