

Export Credit Guarantees of the Federal Republic of Germany
Hermes Cover



Hermes Cover Special

► Indemnification
procedure

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Your foreign debtor experiences payment difficulties – What to do?

There are outstanding amounts due to you? And your foreign debtor experiences payment difficulties? In the case of a potential loss, it is essential that you contact Euler Hermes at an early stage and cooperate closely with them at all times so as to guarantee a smooth indemnification process. This guide aims at providing answers to frequently asked questions with regard to the necessary steps to be taken in the case of a loss due to commercial reasons.

In the case of a potential loss you must observe the following basic rules:

1. You must promptly notify the Federal Government in writing of any risk-increasing circumstances which come to your attention. Furthermore, you must notify the Federal Government of the measures you have already taken or intend to take for securing your claim to payment.
2. If you intend to make further shipments to the foreign debtor, the prior approval by the Federal Government is required.
3. You are required to take all due and reasonable measures according to the principle of due diligence to prevent or mitigate the loss.

When is the right time for submitting your claims application?

Before submitting your claims application we advise you to consider whether the payment difficulties of the foreign debtor could be resolved by a prolongation. What you have to take into account here is that the postponement of payments due under a Federal Guarantee requires the prior approval by the Federal Government, unless the postponement does not exceed the due date stipulated in the Export Credit Guarantee Declaration.

If a prolongation is out of the question, you may submit the claims application for amounts receivable due for payment upon the occurrence of one of the covered risks. The period of time set between the due date of the amounts receivable and the occurrence of a claim under the cause of loss (waiting period) depends on the individual type of risk and the type of cover you have taken out. Thus, in the case of single export credit guarantees or wholeturnover policies, the most common cause of loss, "Protracted default", is deemed to have occurred if the foreign buyer fails to make payment within six months after due date. In the case of finance credit cover, the "Protracted default" is deemed to have occurred one month after due date.

If, in contrast, the non-payment of the amounts receivable is due to the insolvency of the foreign debtor, or a court or out-of-court settlement between the creditors has been reached, the insured event is deemed to have occurred upon the application of or assent to the composition proceedings. At any rate, you will not receive indemnification prior to the due date of the amounts receivable. The same applies in the case of a return of an unsatisfied execution or a suspension of payments evidenced by confirmation from a reference agency or Chamber of Commerce.

How to submit a claims application?

When filing a claim you are obliged to use the official form for claims applications provided by Euler Hermes Kreditversicherungs-AG called "Antrag auf Entschädigung". It will assist you in giving a detailed description of the transaction under which the loss has occurred and fully advise you on what additional documents you are required to submit for claims examination.

The official application form is available at the Federal Export Credit Guarantee Division of Euler Hermes Kreditversicherungs-AG, at its branch offices, or you may download it from the internet under <http://agaportal.de/pages/aga/produkte/antragsformulare.html>.

Please take note: If you have taken out a Wholeturnover Policy light, Euler Hermes Kreditversicherungs-AG provides a special claims application form which is only available on the internet.

What additional documents do you have to enclose?

You must submit the following documents together with the claims application:

In the case of single export credit guarantees or wholeturnover policies:

- Contract/order confirmation,
- Supply contract,
- Confirmation by the bank that the amount of the down-payment has been credited,
- Shipping documents,
- Invoices, date of invoice of the first uncollectible debt,
- Statement of the foreign buyer's account starting six months before the first uncollectible debt
- Documentation of down-payments and other instalments made by the foreign buyer
- Reminders
- Evidence by the Chamber of Commerce and Industry of the portion of subcontractors from the New Federal States involved in the transaction, if documented;



Documentary proof of the event of loss, if required:

- Documentation of the institution of insolvency proceedings,
- Documentation of the institution of composition proceedings,
- Documentation of an out-of-court settlement
- Evidence of an unsatisfied execution

In the case of finance credit guarantees:

- Loan agreement
- Repayment schedule

In the case of manufacturing risk cover the exporter must submit the following additional documents:

After the Federal Government has accepted the claim on its merits, the Policyholder must verify the level of the prime costs eligible for indemnification by means of an expertise by an independent and qualified auditor, based on the Guiding Principles for Pricing on the basis of Prime Costs (LSP).

How long does it take to finally decide on your claims application?

When all necessary documents have been submitted to the Federal Government, the claim will be processed within two months' time. Claims payment will be effected within the space of one further month after announcement of claims settlement.

In the case of finance credit guarantees, the claims processing is reduced to one month, claims payment will then be effected within five bank working days.

How can you accelerate the indemnification process?

The additional documentation and detailed description of the underlying export transaction which you must submit together with the claims application has a major influence on the time it takes to process the claim. The two most important factors for a swift and efficient processing are the undoubted evidence of the legal validity of your claim to payment of the amounts owing (see below) and the complete and coherent documentation of the facts. The foreign buyer's account is of special interest here, which should be presented in a plausible and comprehensible way to be able to identify the particular due dates and attribute the payments made by the foreign buyer to the respective amounts receivable.

Is it possible to withdraw your claims application?

You may withdraw your claims application as long as no legally valid decision has been made. We especially advise you to cancel your claims application if it becomes apparent that you will not be able to substantiate the claim, or if due to a breach of duty under the guarantee the Federal Government would be released from its obligation to indemnify.

Can a claim to indemnification become barred by lapse of time?

If the Policyholder does not submit the claims application within two years after the respective due date of the Guaranteed Amount notified to the Federal Government, pursuant to Article 3, paragraph 2 of the General Conditions, the Guaranteed Amount is deemed to have been duly paid and, as a consequence, is no longer eligible for indemnification.

The period of two years commences anew when the Guaranteed Amount is being reported as overdue or the Federal Government receives any other notice with regard to the status of the collection of the Guaranteed Amount.

How long are you required to keep the documents after indemnification?

Regardless of regulations based on tax or commercial law, you are required to keep all documents pertaining to the respective loss until the indemnified claim against the foreign debtor has either been successfully recovered or the Federal Government has released you beforehand from your obligation to take appropriate steps to implement the recovery. With regard to the common practice applied by many companies of saving their documents on microfilm, you must take into account that although it is generally permissible, any doubts as to the authenticity of, e.g., legal documents, will be held at the expense of the Policyholder. We therefore urgently advise you to keep the documents until the Federal Government informs you that the case has been closed.

To receive indemnification the following conditions have to be fulfilled:

- a) Evidence of the maturity of the amounts owing and the legal validity of the claim to payment

It is the Policyholder who has to provide evidence of the **maturity** and **legal validity** of the claim. Furthermore, the Policyholder has to prove the **existence of the preconditions for a claim under the cause of loss**.



With regard to the most frequently occurring cause of loss, Protracted Default, this means that apart from providing evidence that the amounts receivable have not been paid six months after the original due date, you must also prove that you have taken all appropriate measures for the collection of the Guaranteed Amount observing the standards of due diligence, such as the prosecution of legal action through the courts or a collection agency, or the involvement of the respective foreign Chamber of Commerce. If you do not know how to get in touch with these foreign bodies, the claims department of the Euler Hermes Export Credit Guarantee Division is able to provide you with the names of the respective contact persons.

In the case of medium-term export credit guarantees, you must also observe the two months' notification period within which you must inform the Federal Government of the non-payment of the Guaranteed Amount; otherwise the date of ascertainment of the loss will be deferred accordingly.

If, in addition, any personal security interests are detailed in the Export Credit Guarantee Declaration, indemnification will only become effective if and to the extent to which also those amounts receivable for which a guarantor is held liable have been ascertained as a loss.

b) Taking of appropriate measures to mitigate the loss

After you have submitted your claims application and after you have received indemnification you remain obliged to take legal action as well as carry out measures for the collection of the indemnified amount. Within your duty to prevent and mitigate losses you are obliged to take all appropriate action to prevent or minimise the loss. In many cases, the sale of the goods elsewhere may prove to be an effective measure to mitigate the loss, provided that you are still in possession of the goods and that there is evidence that under the circumstances then in place you may assume that the debt will not be paid. In general, the sale of the goods to other buyers remains possible even after the control over the goods has passed on to the original foreign buyer. In many cases the foreign buyer is willing, due to his payment difficulties, to reassign the goods to the exporter to enable him to dispose of the goods elsewhere.

However, prior to taking any action with regard to the disposal of the goods elsewhere, you must get the approval of the Federal Government. Precondition for this approval is that a positive amount is realized after deduction of the sales costs.

Furthermore, the Policyholder is required to keep the Federal Government or their designated representative informed of the details and the current state of the export transaction and of any other circumstances with a material bearing on the Export Credit Guarantee.

c) Removal of any objections raised against the legal validity of the claim to payment

If the foreign debtor refuses to pay the amounts receivable on the grounds of warranty claims under the export contract, or the legal validity of the security interests detailed in the Export Credit Guarantee Declaration is disputed, or if other challenges or objections are raised against them, the Federal Government is entitled to reject your claims application pending evidence from you which sufficiently substantiates the legal validity of the claim to the Guaranteed Amount or of the security interests detailed in the Export Credit Guarantee Declaration. You may provide evidence by means of a decision by the court or arbitral tribunal; the risks of applicable law and the place of jurisdiction, however, shall be borne by you. Apart from substantiating the claim by means of legal action, any other documentary proof pertaining to the export transaction, e.g., the written documentation of the transaction, or certificates of acceptance, may be helpful for proving whether the objections raised by the foreign buyer are legitimate.

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Information on the Export Guarantee Scheme
of the Federal Republic of Germany is available on the Internet at:
www.agaportal.de



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