

PRACTICAL INFORMATION



HERMES COVER SPECIAL NOVEMBER 2010

Refinancing of officially supported export receivables

EXPORT CREDIT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Hermes Cover**

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In order to maintain their international competitiveness exporters frequently have to grant attractive terms of payment or provide finance in addition to offering a good product. There is the possibility to finance the transaction through a buyer credit extended by a bank. In such a case the bank can insure its claim for payment under the loan agreement with a Buyer Credit Guarantee. As an alternative the exporter himself can grant a **SUPPLIER CREDIT** to his customer by agreeing deferred payment terms. In this case a Supplier Credit Guarantee secures the trade receivables in respect of which credit has been granted. The text below explains how exporters can use their receivables covered by Federal Export Credit Guarantees for refinancing purposes.

I. HOW CAN THE EXPORTER USE HIS EXPORT RECEIVABLES FOR REFINANCING?

With a supplier credit the exporter is always faced with the question whether he has sufficient resources of his own to extend a credit to the buyer or whether he needs some form of refinancing.

During the manufacturing and delivery phase the exporter normally refinances himself with operating loans from his principal banker.

If the buyer requests extended-term financing also for the phase after delivery or commissioning, it is frequently necessary to involve outside lenders. The exporter can then procure liquidity by borrowing from his principal banker. If the exporter offers his trade receivables as collateral to the bank, this may facilitate the access to the capital market or improve the loan terms. As an alternative the exporter can sell his receivables in order to gain liquidity. In both cases the receivables are passed on, from a legal point of view, by way of **ASSIGNMENT** by the exporter (assignor) to the bank (assignee).

1. ASSIGNMENT BY WAY OF SECURITY

The exporter may assign his export trade receivables to his principal banker as **SECURITY FOR A LOAN**. In this case the receivables are only assigned for so-called collateral purposes: Externally, vis-à-vis the debtor the bank becomes the holder of the claims assigned to it. But under a security agreement between the exporter and the bank, it may only fall back on the receivables assigned if and when the exporter fails to repay the loan extended to him within the specified period. Besides, the bank is obliged under the security agreement to reassign the receivables to the exporter once he has discharged the secured debt.

2. SALE OF RECEIVABLES

If the **RECEIVABLES ARE SOLD**, the assignee irrevocably buys the receivables which the exporter assigns to him. This means that he assumes the position of the foreign buyer's creditor originally held by the exporter. Normally, the bank or forfaiting company pays the purchase price less a discount to the exporter as soon as the documents agreed in the purchase contract proving the export trade receivables are submitted. As a result of this the exporter gains immediate liquidity and relieves the strain on his balance sheet. He can thus bridge the waiting period between the issuing of the invoice and the receipt of payment. The purchase of individual receivables without recourse to the supplier by banks or forfaiting companies is also known as **FORFAITING**. If numerous (short-term) receivables are purchased, this is called **FACTORING**.

II. WHAT ARE THE ADVANTAGES OF HERMES COVER IN CONNECTION WITH THE ASSIGNMENT OF RECEIVABLES BY WAY OF SECURITY OR THEIR SALE?

Hermes Cover enhances the value of the export trade receivables both in the case of an assignment by way of security and a sale of receivables and thus enables the exporter to procure refinancing at more favourable conditions. In particular when the receivables are to be



sold, the bank will be more inclined to buy if the export trade receivables are insured against non-payment under an export credit guarantee. This holds especially true for transactions in riskier markets. Thus Hermes Cover may make it easier for the exporter to obtain supplier credits by way of selling receivables or may be a precondition for this form of refinancing in the first place.

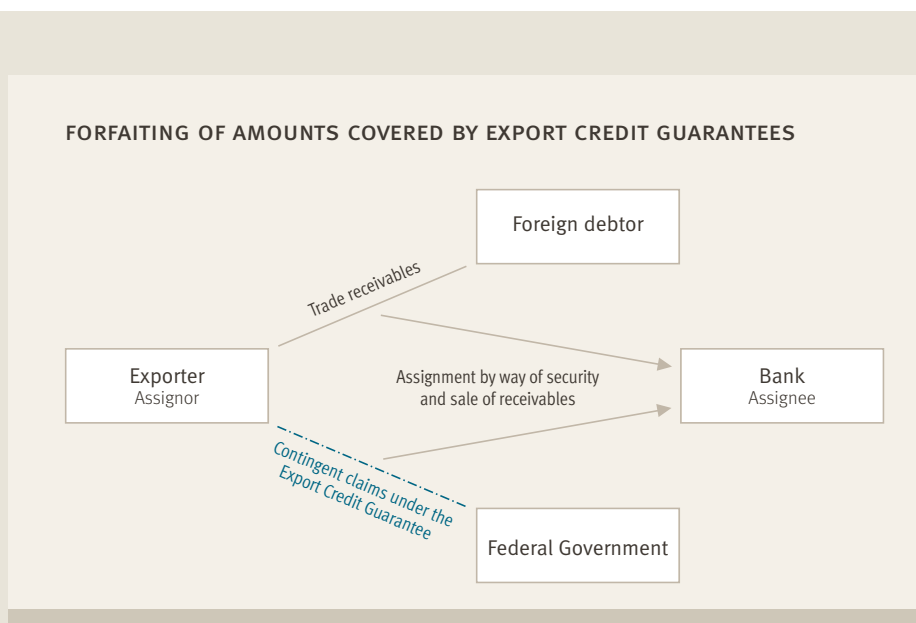
III. HOW ARE ASSIGNMENTS BY WAY OF SECURITY AND SALES OF RECEIVABLES TREATED UNDER HERMES COVER?

If a transaction is covered under an export credit guarantee, the exporter has **TWO CLAIMS** against different debtors which he may assign to the assignee: on the one hand the **GUARANTEED EXPORT TRADE RECEIVABLES** due from his buyer, on the other hand the **BENEFIT OF THE GUARANTEE** from the Federal Republic of Germany as provider of cover. In practice the exporter regularly assigns both claims to the assignee, i.e. both the guaranteed amounts and the benefit of the guarantee. However, he is not obliged to do so.

Application of the new rules governing assignments

Following the introduction of new rules on March 31, 2009, it has become easier for exporters to assign their receivables. These new rules apply to all assignments made **after March 31, 2009**. The date on which cover was granted does not matter in this context. The new regulations applicable to the guaranteed amounts and the benefit of the guarantee pursuant to Articles 19 and 20 of the General Conditions for Supplier Credit Guarantees, Buyer Credit Guarantees, Wholturnover Policies and Wholturnover Policies light as well as Article 17 of the General Conditions for Manufacturing Risk Guarantees in conjunction with the **Supplementary provisions relating to the assignment of Guaranteed Amounts (GC (AP))** can be found on the website www.agaportal.de.

Since the assignment of the guaranteed amounts and the benefit of the guarantee also affects the contractual relationship between the Federal Republic of Germany and the exporter, the General Conditions include specific rules and regulations with regard to that.



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IV. DOES THE EXPORTER HAVE TO OBTAIN THE CONSENT TO ASSIGNMENTS UNDER HERMES COVER?

1. NORMALLY ASSIGNMENTS DO NOT REQUIRE CONSENT

In practice exporters can assign the **GUARANTEED AMOUNTS (ARTICLE 19 GC)** in most cases without having to obtain the Federal Government's consent. This applies to

- ▶ assignments by way of security
- ▶ the sale of receivables to the following accepted assignees (Article 1, paragraph 1 GC (AP)):
 - Banks which are domiciled in a country belonging to the **EUROPEAN ECONOMIC AREA (EEA)**: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom) or in Australia, Canada, Japan, New Zealand, South Korea, Switzerland or the USA.
 - Domestic financial services companies which regularly buy receivables on the basis of **GENERAL AGREEMENTS** under a license from Finanzdienstleistungsaufsicht (BaFin) (forfaiting and factoring companies).

The assignment of the **BENEFIT OF THE GUARANTEE** (Article 20 GC), as a rule, does not require the Federal Republic's consent, irrespective of who the assignee is. This applies to both assignments by way of security and forfaiting.

2. AS AN EXCEPTION FROM THE RULE CONSENT IS REQUIRED FOR THE ASSIGNMENT OF THE GUARANTEED AMOUNT FOR:

- ▶ The sale of receivables to assignees who are not approved, such as e.g.
 - foreign banks domiciled outside the countries listed above
 - domestic and foreign subcontractors of the exporter
 - foreign forfaiting and factoring companies
 - domestic forfaiting companies which buy only individual accounts receivable **WITHOUT** signing a **GENERAL AGREEMENT** with the exporter because these companies are not subject to the supervision of BaFin in this respect.
- ▶ Assignments of partial amounts

A partial assignment of the **GUARANTEED AMOUNT** is a case where, for example, only the principal amount but not the interest payable is sold to the bank. Such **SALES OF RECEIVABLES** require the consent of the Federal Government.

If the bank buys only the guaranteed portion of the receivables without assuming the uninsured portion which the exporter has to retain, the Federal Government will not treat this as assignment of partial amounts but as an **ASSIGNMENT OF THE (TOTAL) GUARANTEED AMOUNT NOT REQUIRING ITS CONSENT**. In this case the bank carries only that part of the guaranteed amount in its books for which an indemnification will be paid in the event that a loss occurs. At the same time 100 % of the benefit of the guarantee is assigned to the bank. In such cases the exporter and the assignee have to guarantee that in case of a loss 100 % of the claim for payment against the foreign debtor can be enforced either by the exporter or by the bank.



A partial assignment of the **BENEFIT OF THE GUARANTEE ALWAYS** requires the government's consent, i.e. both in the case of a sale of the receivables and in the case of an assignment by way of security (Article 20 GC). In fact, a partial assignment is legally valid even without this consent; however, the Federal Government would be permitted to pay the indemnification amount to the exporter as the original creditor if a loss occurs (Section 354 a HGB (German Commercial Code)).

In the case of a partial assignment it is always the exporter who has to assert the claim for indemnification. The right to assert a claim for indemnification cannot be assigned in part to the assignee or to various assignees (Art. 4 (3) GC (AP)).

► **Subsequent assignments**

If the **GUARANTEED AMOUNT** is resold by an assignee such a subsequent sale of the receivables requires the consent of the Federal Government even if both assignees are accepted assignees (Art. 1 paragraph 1 GC (AP)).

The subsequent assignment of the **BENEFIT OF THE GUARANTEE**, too, requires the government's consent (Art. 20 GC). In fact, a subsequent assignment is legally valid even without this consent; however, the Federal Government would be permitted to pay the indemnification amount to the exporter as the original creditor if a loss occurs (Section 354 a HGB (German Commercial Code)).

V. PROCEDURE FOR ASSIGNMENTS

All additional conditions and legal consequences in connection with assignments are governed by the Supplementary Provisions relating to the Assignment of Guaranteed Amounts (GC (AP); March 2009). They apply to both assignments by way of security and forfaiting.

1. DOES THE EXPORTER HAVE TO NOTIFY THE ASSIGNMENT?

An obligation to notify the assignment does not exist. However, the Federal Republic of Germany can pay the indemnification to the exporter even after the assignment if the assignment has not been notified. Therefore a written notification is always in the interest of the assignee. The assignment can be notified either by the **EXPORTER** or the **ASSIGNEE**.

The following information should be stated in the notification of the assignment of individual receivables:

- DN number (number of the policyholder)
- In the case of single transaction guarantees, FA number (order number)
- The name of the foreign debtor and the AK number (number of the foreign debtor)
- Number and date of the invoice
- Amount and due date of the receivables assigned

It is also possible to assign an **INDIVIDUAL** account receivable covered under a Wholturnover Policy (APG) or a Wholturnover Policy light (APG light) or a Revolving Supplier or Buyer Credit Guarantee. But also **ALL** amounts due from any one debtor or from all debtors in any one country or **ALL EXISTING AND FUTURE GUARANTEED AMOUNTS** can be assigned. In order to keep administrative expenses as low as possible, exporters are advised to make use of a general notification or a notification relating to a specific country or a specific debtor if they have taken out wholturnover or revolving cover (see text box on page 6).

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Examples of possible wordings for notifications of assignment given by the exporter under a Wholeturnover Policy**General notification of assignment**

We hereby inform you that we have assigned all existing and future Guaranteed Amounts as well as any corresponding claims under the Wholeturnover Policy no. (*), DN no. (*) against the Federal Republic of Germany to the bank (B).

Notification of assignment relating to a specific debtor

We hereby inform you that we have assigned all existing and future Guaranteed Amounts payable by the debtor (*) AK no. (*) as well as any corresponding claims under the Wholeturnover Policy no. (*), DN no. (*) against the Federal Republic of Germany to the bank (B).

Notification of assignment relating to a specific country

We hereby inform you that we have assigned all existing and future Guaranteed Amounts payable by all debtors domiciled in Country (A) as well as any corresponding claims under the Wholeturnover Policy no. (*), DN no. (*) against the Federal Republic of Germany to the bank (B).

2. WILL RECEIPT OF THE NOTIFICATION BE ACKNOWLEDGED?

After receiving the notification of assignment, the Federal Government will acknowledge the receipt briefly in writing to the person/entity that notified the assignment. If an exporter who has taken out a Wholeturnover Policy or a revolving guarantee repeatedly assigns amounts payable by the same debtor under subsequent invoices for successive deliveries, the confirmation letter will be regularly sent **ONLY FOR THE FIRST ASSIGNMENT** that is notified. It is guaranteed that indemnification payments can no longer be made to the exporter without the assignee's consent. If the exporter assigns all receivables covered by the Wholeturnover Policy, only one letter of confirmation will be sent, too.

3. WILL THE ASSIGNEE RECEIVE AN INDEMNIFICATION PAYMENT IN ANY CASE?

When a notification of assignment is received, no check will be made on behalf of the assignee whether and to what extent there is in fact any claim to indemnification. Therefore, when buying guaranteed amounts, the bank will regularly reserve a limited right to recourse against the exporter because he remains liable to perform the duties and obligations under Hermes Cover. Any causes for the exoneration from its liability which the Federal Republic of Germany can put forward against the exporter regularly result in the bank not receiving any indemnification either. In the case of a Wholeturnover Policy the Federal Government does not check either whether all receivables are actually validly included in the cover when receiving a notification of assignment.

4. WHAT IS THE DIFFERENCE BETWEEN A DISCLOSED AND AN UNDISCLOSED ASSIGNMENT?

An assignment of the guaranteed amount can be disclosed or not. When the assignment is disclosed, the foreign debtor is informed that the receivables payable by him have been assigned.



For a **DISCLOSED** assignment the **WRITTEN CONSENT OF THE DEBTOR** to the assignment must be obtained so that the effectiveness of the assignment is not called into question in this respect. Failure to do so may result in no indemnification being paid because there might be a cause for the Federal Republic's exoneration from its liability (see Art. 3 (2) GC (AP)).

5. DOES THE ASSIGNMENT CHANGE ANY OF THE EXPORTER'S DUTIES?

The General Conditions of Hermes Cover remain unchanged even after a valid assignment. The exporter as policyholder continues to be the contracting partner of the Federal Republic of Germany. There will be no changes in his contractual obligations. He has to make sure that the performance of his duties remains possible for him or that the assignee can perform these duties (see Art. 4 (1) GC (AP)).

6. WHO CAN ASSERT A CLAIM FOR INDEMNIFICATION?

In principle, the claim to indemnification has to be asserted by the **EXPORTER** even after the assignment. He has to initiate the claims procedure despite the assignment (see Art. 4 (3) GC (AP)). The **ASSIGNEE** can only assert the claim to indemnification subject the following conditions:

- ▶ It has to be a **FINANCIAL INSTITUTION** which is approved as assignee (Art. 1, paragraph 1, item 1 GC (AP)). Any credit institution which is domiciled outside the European Economic Area or Switzerland has to name an authorized agent in one of these countries with whom the claim for indemnification can be settled (in German).
- ▶ The exporter must **STATE IN WRITING** that the claim for indemnification is to be asserted by the assignee in lieu of him.

In the event of the **ASSIGNMENT OF PARTIAL AMOUNTS** the bank as assignee is barred from asserting the claim for indemnification. Consent to an assignment of partial amounts is always given subject to the condition that the claim for indemnification is asserted by the **EXPORTER**. However, the assignees' respective shares in the indemnification can be paid directly to them.

7. WHAT MUST BE OBSERVED IN THE COURSE OF THE INDEMNIFICATION PROCEDURE?

If a bank, in its position as assignee, asserts the claim for indemnification and initiates the claims procedure, it has to meet the same standards as the exporter. In particular the bank must be in a position to prove the legal validity of the receivables for which indemnification is claimed. Therefore it must make sure through an agreement with the exporter to that effect that it can meet the standards of the practical settlement procedure (see WWW.AGAPORTAL.DE for this).

8. WHO WILL RECEIVE THE INDEMNIFICATION PAYMENT?

Indemnification amounts which have been ascertained will always be disbursed to the **ASSIGNEE** irrespective of whether the exporter or the assignee has asserted the claim. A precondition for this is that a written notification of assignment from the exporter has been presented. However, if it was the assignee who notified the assignment, the Federal Republic of Germany can disburse the indemnification to him only if the exporter confirms the assignment or the assignee submits a copy of the deed of assignment (Art. 4 (4) GC (AP)).

The Federal Government is entitled to set off any claims for money it may have against the exporter under the respective guarantee agreement against the assignee's claim for payment prior to disbursing the indemnification amounts.

Sabine Kindler

Cover from the Federal Republic of Germany for business transactions abroad

The German Government supports German business ventures abroad with its Export Credit and Investment Guarantee Schemes as well as the Untied Loan Guarantee Scheme, thus securing economic growth and safeguarding jobs. To this end, the Federal Republic of Germany provides guarantees against commercial and political risks in connection with export transactions as well as against the political risks of foreign direct investments. In addition to this framework, it is also possible to cover the commercial and the political risks of untied loans relating to projects which are in the overriding national interests of Germany.

The German Government has mandated a consortium formed by Euler Hermes Kreditversicherungs-AG and PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft to manage these promotion schemes.



Federal Ministry
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OUR PARTNERS



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