

# PRACTICAL INFORMATION

OCTOBER 2018



HERMES COVER SPECIAL

Indemnification procedure

EXPORT CREDIT GUARANTEES OF THE  
FEDERAL REPUBLIC OF GERMANY

► **Hermes Cover**

## ► Indemnification procedure

### 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 because that is essential for a smooth indemnification process. This guide describes what you should do in the case of a loss due to commercial reasons under a Wholeturnover Policy, supplier credit cover or buyer credit cover.

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

1. You should promptly report in writing any risk-increasing circumstances, e.g. if the debtor falls into arrears or asks for a prolongation. Furthermore, please, state what 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 a prolongation could resolve the payment difficulties of the foreign debtor. This makes sense because a claims application may have repercussions for the granting of cover for further busi-

ness transactions. However, the postponement of payments due under a Federal Export Credit Guarantee requires the prior approval by the Federal Government.

There is only one exception for Wholeturnover Policies (APG and APG-light). Here the Federal Government's approval is only required if the postponement exceeds the due date stipulated in the Export Credit Guarantee Declaration. Nevertheless, you should still inform us in writing of your foreign customer's request for a prolongation because it constitutes a risk increasing factor.

If a prolongation is out of the question, you may submit the claims application for amounts receivable due for payment if the conditions for one of the covered events of loss are met. This means that we cannot process your claims application until an event of loss has occurred, i.e. the covered receivables are not only overdue but also a waiting period has elapsed without result. Thus, in the case of supplier credit guarantees or Wholeturnover Policies, the most common event of loss, protracted default, is deemed to have occurred if the foreign buyer fails to make payment within six months after due date. The period of time set between the due date of the amounts receivable and the occurrence of a claim under the event of loss is called waiting period. In the case of buyer credit cover, the protracted default is deemed to have occurred one month after due date.

However, if you have already received an indemnification payment for the first overdue instalment due to a specific event of loss, you do not have to wait until the waiting period elapses for subsequent overdue instalments if the same event of loss occurs again (e.g. the foreign debtor continues to default on his payment obligations).

As far as the expiry of the waiting period is concerned, please note the following: If the Federal Government has given its consent to a prolongation, the new maturities are always also decisive for the claims process-

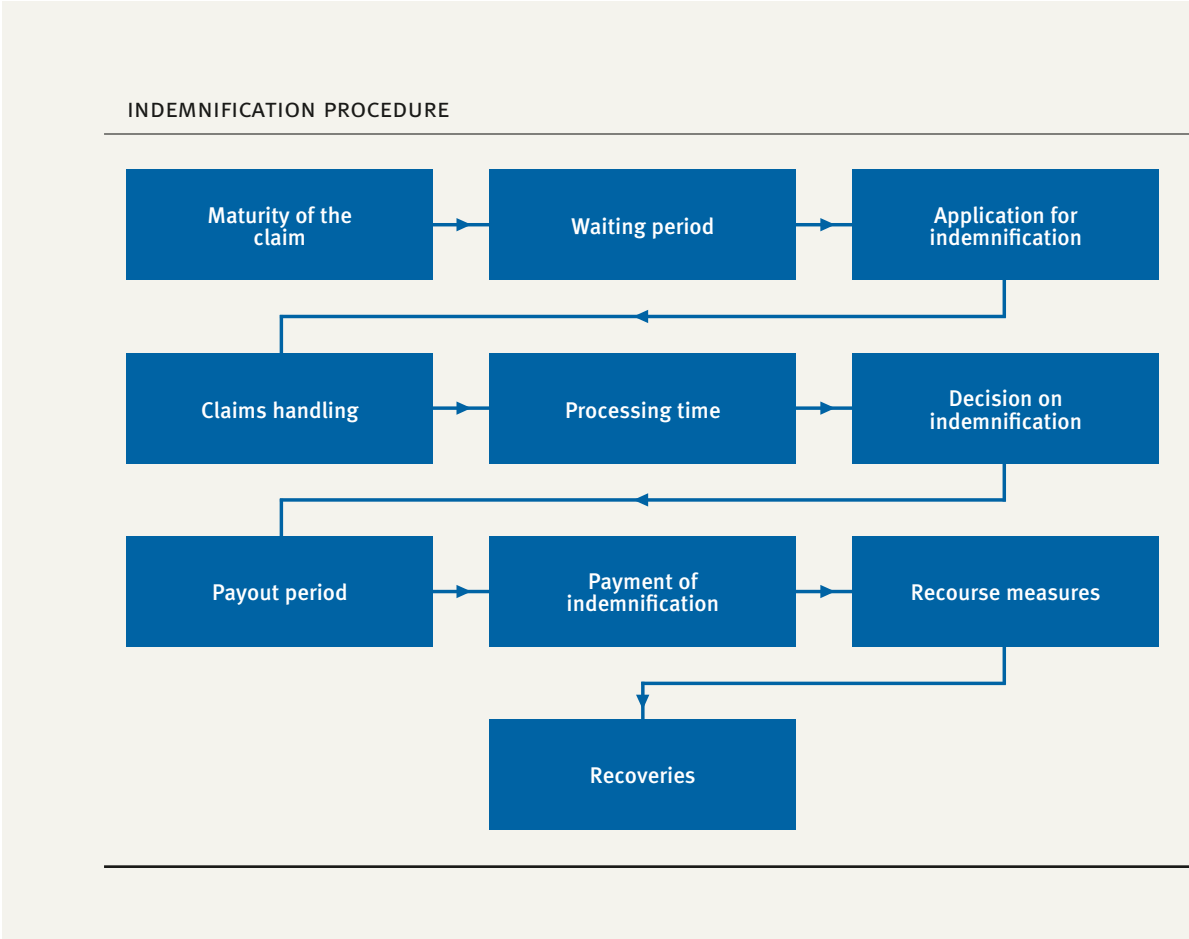
ing. In individual cases you can, after consultations with us, apply for an indemnification on the basis of the original maturities despite the prolongation. Please consult us on this before the prolongation is agreed.

If, however, the non-payment of the amounts receivable is not due to protracted default but 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. Even if the expiry of a waiting period is not required in such a case, you will still not receive indemnification prior to

the due date of the covered 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?**

In order to file a claim, please complete the official form for claims applications called "Antrag auf Entschädigung". It will provide guidance on giving a detailed



## ► Indemnification procedure

description of your transaction and fully advise you on what additional documents you are required to submit for claims examination.

Current forms are available for download on the Internet at [www.exportkreditgarantien.de/en](http://www.exportkreditgarantien.de/en). Please complete the official application form and send a signed and stamped copy to Euler Hermes Aktiengesellschaft, Exportkreditgarantien des Bundes. Please also enclose all required documents (see below). Details regarding the month in which the turnover was reported under a Wholturnover Policy and, under the heading “Schadensminderung” (loss mitigation), any security interests that may exist are particularly important for the claims examination.

Please note: If you have taken out a Wholturnover Policy or a Wholturnover Policy Light, it is possible to complete the claims application form online in the customer portal “myAGA”.

### WHAT ADDITIONAL DOCUMENTS DO YOU HAVE TO ENCLOSE?

You must submit the documents listed below together with the claims application, with **clearly legible** copies normally being sufficient. If the required documents are not written in German or English, Euler Hermes may ask you to provide brief in-house translations. Certified translations are only required in exceptional cases. The documents should either contain a clear reference to the transaction or their relation to the transaction should be made plain by appropriate explanations supported by proof if necessary. If anything remains unclear, the submission of additional documents can be necessary in individual cases.

The following documents must be submitted:

In the case of **Supplier Credit Guarantees** or **Wholturnover Policies**:

- ▶ Order/order confirmation
- ▶ Export contract
- ▶ Evidence of the valid creation of security interests where applicable
- ▶ Evidence **provided by the bank** that the amount of the down-payment has been credited (supplier credit cover only, for the requirements please see article “Akzeptierte Nachweise für Zahlungseingänge”, AGA-Report No. 247)
- ▶ Proof of delivery and/or performance (e.g. shipping documents, export documents), where necessary, including evidence for the supply chain, if you and/or your customer are not named as consignor and/or consignee in these documents
- ▶ Invoices relating to the uncollectible debts
- ▶ Statement of the foreign buyer’s account, legally signed, starting six months before the first uncollectible debt (APG/APG-light only). Please break any balance received down chronologically according to individual accounts receivable and their respective due dates. Also with regard to all further accounts receivable, we kindly ask you to provide details of the applicable maturities and an allocation of payments to the respective invoices including the dates on which payment was received (please no abstract, no open item list)
- ▶ Documentation of down-payments and other instalments made by the foreign buyer
- ▶ Reminders, collection correspondence
- ▶ Documents evidencing the recourse to any security interests you may have
- ▶ Documents proving any documented foreign content where applicable

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 **Buyer Credit Guarantees:**

- ▶ Loan agreement
- ▶ Evidence of the valid creation of security interests where applicable
- ▶ Always evidence **provided by the bank** that the exporter has received the down-payment (see article “Akzeptierte Nachweise für Zahlungseingänge”, AGA-Report No. 247)
- ▶ Proof that the preconditions for the disbursement of the buyer credit have been met (see brochure “Minimum standards for the specific preconditions for disbursements under buyer credit cover”)
- ▶ Where applicable, letters of credit which have to be opened prior to disbursement
- ▶ Where applicable, documents evidencing the verification of foreign content with the care customary in banking
- ▶ Reminders
- ▶ Further documents proving the event of loss where appropriate
- ▶ Documents evidencing the recourse to any security interests that may exist
- ▶ Repayment schedule

## HOW LONG DOES IT TAKE TO FINALLY DECIDE ON YOUR CLAIMS APPLICATION?

When all documents required for the acknowledgement of the claim for indemnification have been submitted to the Federal Government, the claim will be processed within two months’ time. Claims payment will be regularly effected within five banking days, however, not later than one month after announcement of claims settlement, provided that the policyholder has accepted the claims settlement.

In the case of Buyer Credit Guarantees and Wholturn-over Policies Light, the claims processing is reduced to one month, the payout period is five banking days.

## HOW CAN YOU ACCELERATE THE INDEMNIFICATION PROCESS?

The 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. Documents necessary for the understanding should be accompanied by in-house translations of the relevant passages if they are not in German or English. Other parties involved and their functions should be briefly explained, in particular supply chains should be conclusively documented in detail. Especially when there are numerous invoices, it helps matching them with the documents (orders and shipping documents, etc.) to which they relate. The most important factors for a swift and efficient processing are the undoubtful evidence of the legal validity of your claim to payment of the amounts owing (see page 6) and the complete and coherent documentation of the facts. In connection with Wholturnover Policies the **chronological** foreign

## ► Indemnification procedure

buyer's account is of special interest, which should be presented in a plausible and comprehensible way to be able to identify the particular due dates currently applicable to the foreign buyer. Payments made by the foreign buyer should be attributed to the respective amounts receivable. If the documentation shows extraordinary delays of payment, for example due to the investigation of complaints or amounts not credited towards the oldest maturities, you can avoid necessary inquiries by giving explanatory details.

### CAN A CLAIM TO INDEMNIFICATION BECOME “BARRED BY LAPSE OF TIME”?

If you as policyholder does not submit a claims application within two years (or within one year in the case of a Wholturnover Policy Light), pursuant to Article 3, paragraph 2 of the General Terms and Conditions or Clause 166 of the GC Wholturnover Cover (APG), 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, further legal action has been suspended, after consultations with the Federal Government, for lack of sufficient prospects of success or the Federal Government has released you beforehand from your obligation to take appropriate steps to implement the

recovery. Saving documents in digital archives is generally permissible, however, you as the policyholder will be held responsible for any doubts as to the authenticity of, e.g., legal documents. 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

As policyholder you are required to provide evidence of the **maturity and legal validity** of the claim. You must also prove that the preconditions for a **claim under the event of loss** exist.

With regard to the most frequently occurring event 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 (one month in the case of a buyer credit), 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 commissioning of a lawyer 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, we can provide you with the names of the respective contact persons. If the debtor is a public buyer the Federal Government may assist you by bringing its influence to bear through the embassy in the buyer's country.

In the case of medium-term export credit guarantees, you should inform the Federal Government of the non-payment of the guaranteed amount within the two months. 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 be paid 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 this context you must bear any legal costs incurred prior to the indemnification.

In many cases, the extension of the time for payment of the overdue or distressed receivables may prove to be an effective measure to mitigate the loss. Please note that any extension of the time for payment beyond the permissible payment term always requires the written consent of the Federal Government.

If you are still in possession of the goods and there is evidence that under the circumstances then in place you may assume that the debt will not be paid, the sale of the goods elsewhere may be an option in order to mitigate the loss. 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 realised after deduction of the sales costs.

Furthermore, you as policyholder are 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, e.g. on the grounds of warranty claims under the export contract, or the guarantor disputes the legal validity of the security interests detailed in the Export Credit Guarantee Declaration, or if any 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 and will be taken into account in the decision-making process.

Hence, if the foreign buyer contests the claim for payment, this does not automatically result in a rejection of the application for indemnification. What is decisive is whether any doubts can be dispelled on the basis of conclusive documents and, thus, the rejection of the claim for legal or factual reasons can be judged to be manifestly unfounded.

If any questions arise in the course of the loss settlement, please do not hesitate to phone your contact at Euler Hermes.

Export Credit Guarantees and Untied Loan Guarantees: instruments to promote foreign trade and investment provided by the



Federal Ministry  
for Economic Affairs  
and Climate Action

Commissioned to implement the federal funding instruments Export Credit Guarantees and Untied Loan Guarantees:



EULER HERMES

## Cover from the Federal Republic of Germany for foreign business

Export Credit Guarantees and Untied Loan Guarantees have been established and effective foreign trade promotion instruments of the Federal Government for decades. Export Credit Guarantees (so-called Hermes Cover) protect German exporters and banks financing exports against political and commercial risks. Untied Loan Guarantees are to support raw material projects abroad regarded as eligible for promotion by the Federal Government. Both promotion instruments play an important role in fostering economic growth as well as in protecting and creating jobs. Federal Government commissioned Euler Hermes Aktiengesellschaft to manage the federal funding instruments Export Credit Guarantees and Untied Loan Guarantees.

Information on other foreign trade promotion instruments of the Federal Government can be found at [www.bmwk.de/en](http://www.bmwk.de/en) under the heading Promotion of Foreign Trade and Investment.

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