PRODUCT INFORMATION

JANUARY 2025

Counter-Guarantee

EXPORT CREDIT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

Hermes Cover

► Counter-Guarantee

A Counter-Guarantee enables a German exporter to insure the claim for compensation which a guarantor who has issued a contract bond on his behalf has in the event of the bond being called and the guarantor paying it.

WHAT IS THE IDEA BEHIND THE COUNTER-GUARANTEE?

Export transactions often require an exporter to put up a contract bond. The guarantor who issues the bond on his behalf then charges the exporter's credit lines with the relevant bond amount. Very often the guarantor is only prepared to issue a bond when the exporter provides adequate security – often in the form of a charge over cash collateral. The net result of this is that issuing bonds leads to a reduction of the exporter's liquidity.

The Counter-Guarantee is designed to relieve this situation: in issuing a Counter-Guarantee the Federal Government undertakes to reimburse most of the sum to the guarantor which he has to pay out in the event of the contract bond in favour of the foreign buyer being called. This means that the Federal Government takes over the risk for the guarantor that the latter is unable to successfully take recourse for compensation to the exporter, a right which accrues to him for the sum paid out when the bond is called. The Counter-Guarantee therefore goes a long way towards relieving the recourse risks of the guarantor. This relief enables the guarantor not only to refrain from demanding further collateral from the exporter, thus constraining his liquidity, but in addition makes it unnecessary for him to charge the bond amount against the exporter's credit lines. At the end of the day, this is intended to make it easier for the exporter to put up the bond required by his foreign buyer.

The Counter-Guarantee complements the Contract Bond Guarantee. Under it, the guarantor can be reimbursed for up to 80% of the bond amount if the bond is called by the foreign buyer, irrespective of the reason.

The Federal Government has a recourse claim on the exporter in the amount paid out to the guarantor. This is payable at the latest 6 months after the guarantor is reimbursed.

HOW DOES THE COUNTER-GUARANTEE WORK?

The core of the Counter-Guarantee is the undertaking by the Federal Government (itself equivalent to a guarantee) towards the guarantor to reimburse to him the amount paid out on a bond call within 10 bank days and on first written demand. The percentage reimbursed can be up to 80%.

The undertaking to pay is agreed in a guarantee contract made between the Federal Government and the exporter. If the contract bond for the benefit of the foreign buyer is not issued directly by the exporter's principal bank, which provides the financing, but by a different credit institution, it is not the direct bond that will be covered by the Counter-Guarantee but the corresponding back-to-back guarantee issued by the exporter's principal bank. In both cases the undertaking applies – unlike the insured events in contract bond cover – for any and every reason for calling the bond, and therefore also to fair calling.

After reimbursement has been made, the Federal Government has recourse on the exporter. The right of recourse is normally asserted only 6 months after reimbursement of the guarantor and only when no claim has been recognized in favour of the exporter as valid up to that date in respect of the corresponding Contract Bond Guarantee. If such a valid claim has been accepted, the claim for recourse will be set off against the amount due for indemnification.

WHAT IS GUARANTEED?

A Counter-Guarantee provides security for the exporter in favour of the guarantor for the loss up to 80% of the bond sum paid out by the latter. Payment guarantees assumed by the guarantor in excess of the actual bond amount, such as interest, compensation for damages, legal or other costs are in principle not insurable. An exception here is a Counter-Guarantee given in respect of an advance payment bond. This also covers the interest normally included in the bond.

WHO CAN APPLY FOR A COUNTER-GUARANTEE AND WHO IS THE BENEFICIARY?

Every German exporter can apply for a Counter-Guarantee.

The beneficiary of a Counter-Guarantee can be any German bank and the branch offices of foreign banks domiciled in Germany as well as (subject to certain conditions) also foreign banks. As an alternative to banks, guarantee insurers too can be the beneficiary in accordance with the criteria described above. The guarantor will be involved through a so-called “Ergänzungserklärung des Garantiestellers zur Avalgarantie” (supplementary declaration of the guarantor concerning the Counter-Guarantee) which has to be signed before the Federal Government finally commits itself to giving a Counter-Guarantee.

HOW MUCH DOES A COUNTER-GUARANTEE COST?

A Counter-Guarantee generates no extra premium for the exporter. The risk-priced compensation due to the Federal Government for assuming the Counter-Guarantee is discharged by means of its share in the bond premium which the exporter already has to pay to his guarantor in any case for issuing the contract bond.

The guarantor can retain a fronting fee of 10% of this bond premium. The remaining 90% are shared between the guarantor and the Federal Government depending on the percentage of reimbursement agreed.

In practice the Federal Government makes out an invoice upon assuming the Counter-Guarantee on the basis of the market-oriented premium indication given by the guarantor with which a lump sum first premium is charged up front. This advance premium will be adjusted to reflect the actual risk as at the end of the calendar year. Any difference between the advance premium paid and the premium then calculated will be set off against the advance premium charged for the renewal of the Counter-Guarantee for the then current year.

WHAT CONDITIONS DOES THE EXPORTER HAVE TO FULFIL IN ORDER TO GET A COUNTER-GUARANTEE?

As a rule, the granting of a Contract Bond Guarantee for the contract bond in question is a precondition for getting a Counter-Guarantee. In turn, this is, on principle, only given in connection with a principal guarantee. A principal guarantee can be dispensed with if cover of the other risks involved is not possible, not reasonable or not wanted by the exporter. However, it is always necessary to have a corresponding Contract Bond Guarantee.

A Counter-Guarantee can also be granted for covered business which is already being transacted if

- a principal guarantee and a Contract Bond Guarantee have already been granted
- so far only a principal guarantee exists but the granting of a Contract Bond Guarantee is still possible because the contract bond has not yet been issued or
- the main transaction has not been covered and cannot be covered for lack of risks that are eligible for cover (e.g. payment under an irrevocable letter of credit) but the granting of a Contract Bond Guarantee is still possible because the underlying contract bond has not yet been issued.

In addition, it is necessary for the exporter to prove that he has the organisational and technological resources to ensure due performance of the export transaction. The assessment of the exporter’s ability to ensure performance is done mainly by means of a questionnaire to be filled out by him. The maximum liability of the Federal Government in respect of all Counter-Guarantees assumed is EUR 120 million per exporter. Subject to certain conditions this limit on the maximum exposure may be exceeded in individual cases if that turns out to be necessary due to the special nature of the transaction.

WHEN WILL THE COUNTER-GUARANTEE BECOME EFFECTIVE?

A Counter-Guarantee given by the Federal Government takes effect upon receipt of the letter of confirmation from the Federal Government.

The Counter-Guarantee would become ineffective only if the guarantor failed to pay the premium within the term of payment set by the Federal Government even after receiving a letter of reminder; in such a case it is up to the guarantor to maintain the effectiveness by making payment within the time limit.

WHAT PERIOD IS THE COUNTER-GUARANTEE VALID FOR?

The commitment undertaken by the Federal Government begins in respect of guarantees already issued immediately with the receipt of the letter of confirmation from the Federal Government. In respect of a guarantee which has not been issued the commitment undertaken by the Federal Government begins when the guarantee is actually issued. If, in praxis, the coming into effect of the guarantee is taken as basis, the commitment undertaken by the Federal Government also begins with the coming into effect of the guarantee and not with its issuance.

It expires when any alteration of the bond which increases the risk is undertaken at the instigation of the exporter, but without obtaining the consent of the Federal Government, e.g. in terms of the volume, or at the latest when the liability of the guarantor under the contract bond ends. Any prolongations of guarantees limited in time must be notified to the Federal Government. The expiry of the guarantee must be reported to the Federal Government for each type of guarantee/risk block by means of a so-called release declaration.

WHEN AND HOW IS REIMBURSEMENT MADE?

A precondition for reimbursement of the guarantor is that he provides evidence of the call made on him.

The agreed percentage of the amount paid out will be reimbursed within 10 days of first written demand from the guarantor stating and providing evidence that he has duly met his obligations in respect of the specific contract bond called and covered by the Counter-Guarantee.

WHEN AND HOW CAN THE FEDERAL GOVERNMENT TAKE RECOURSE?

After the Federal Government has reimbursed the guarantor under the Counter-Guarantee, a claim for recourse in the same amount in its favour exists towards the exporter. The Federal Government waives its right to this for a period of 6 months provided that the exporter submits an abstract statement recognizing the validity of the recourse claim.

During this deferral period the exporter has the chance to prove that he has a corresponding claim for indemnification against the Federal Government in respect of the underlying Contract Bond Guarantee. If such a valid claim exists, the recourse claim is set off against the claim for indemnification.

If, however, it transpires that the foreign buyer called the contract bond for reasons within the responsibility of the exporter, so that the claim for indemnification under contract bond cover must be rejected, the recourse claim as a rule becomes immediately effective. The same applies in particular if it turns out that the exporter obtained the Counter-Guarantee by giving incorrect information or when any event defined as insolvency occurs with respect to him.

WHAT CHANGES WILL RESULT FROM THE OPTIMIZATION OF THE COUNTER-GUARANTEE AS OF JANUARY 2025?

Since January 2025, the German government offers an optimized counter-guarantee in order to expand the financial opportunities for new business and to promote positive effects on Germany's industrial location and the German labour market.

Essentially, the following changes have been introduced:

- Increased maximum liability: the maximum liability for counter-guarantees has been increased from EUR 80 million to EUR 120 million per exporter.
- Flexibility for eligible transactions: A higher maximum amount will be set on a case-by-case basis for particularly eligible transactions, e.g. in the field of energy transition.
- Support for transformation and resilience: Promotion of transactions that contribute to climate transformation and strengthen technological sovereignty.

HOW CAN YOU APPLY FOR A COUNTER-GUARANTEE?

The Federal Government can be contacted via Euler Hermes Aktiengesellschaft.

The company's head office in Hamburg as well as its numerous regional branch offices in Germany will be happy to give you more details. In addition, extensive information material is available for study and download on the internet under www.exportkreditgarantien.de/en, partly only in German.

Main features of the Counter-Guarantee at a glance:

Applicants:	All German exporters
Eligible beneficiaries:	All German banks and German guarantee insurers; all German branch offices of foreign banks/guarantee insurers; certain foreign banks/guarantee insurers
Precondition:	The parallel granting of a Contract Bond Guarantee
Object of the Counter-Guarantee:	Up to 80% of the amount paid by the guarantor in response to a bond call
Discharge of the guarantee commitment:	On first written demand, within 10 bank days after the call is made on the guarantor; irrespective of the reason for calling the bond Claim of the Federal Government for recourse against the exporter in the amount reimbursed to the guarantor; normally deferred for 6 months
Premium:	No extra premium; the Federal Government receives a pro rata share of the bond premium charged by the guarantor to the exporter for issuing the contract bond; for this purpose the guarantor is invoiced by the Federal Government for the first and renewal premiums; first, an advance premium is charged which will be finally settled at the end of each calendar year and when the Federal Republic is released from liability.

www.exportkreditgarantien.de/en

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:

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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 under the heading Promotion of Foreign Trade and Investment.

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