PRACTICAL INFORMATION

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HERMES COVER SPECIAL

Leasing Cover

EXPORT CREDIT GUARANTEES OF THE FEDERAL REPUBLIC OF GERMANY

Hermes Cover

► Leasing Cover

WHAT LEASING BUSINESS IS ELIGIBLE FOR FEDERAL GOVERNMENT COVER?

Leasing cover is available both for leasing transactions involving movable objects and for real estate leasing. Eligibility for cover is not dependent on the leasing contract having a particular construction; this means that leasing cover can be given for **full payout leasing** as well as for **residual value leasing (non-full payout leasing) contracts**. This is in every case, however, with the proviso that the lease in question is **cross-border leasing**, i.e. a leasing transaction between a lessor domiciled in Germany and a lessee with his registered office in another country.

The lessor must normally be entitled to repossess the object of the lease if the lessee is in arrears with his payments, or at least be entitled to withdraw the right of use in respect of the object. If the lessor only receives the property in the leased asset from its manufacturer subsequent to its dispatch, he is obliged to ensure in his relation to the latter that he is able to enforce all those rights normally accruing to the owner of the asset towards the lessee.

Leasing transactions in which the transfer and use of the leased asset is the principal purpose of the contract, and not the financing function (operating leases), are eligible for export guarantee cover as well.

WHAT POINTS SHOULD BE OBSERVED WHEN ARRANGING THE TERMS OF PAYMENT?

A precondition for the assumption of leasing cover is that the **credit period** complies with the basic criteria laid down by the Interministerial Committee for sales transactions on credit terms. The guidelines for export credits agreed by the member states of the OECD (the OECD Consensus) are the basis for these. The maximum permissible credit periods depend on various factors, in particular the type of goods concerned, the order value and the status of the buyer's country. Credit periods between 18 months and five years are usual in business involving capital goods. Longer credit periods may be covered in the case of higher order values. You can obtain more detailed information by getting in touch with Euler Hermes Aktiengesellschaft.

It should be noted, too, that prolongation of the contract or invoicing of the residual value of the asset to the lessee on credit terms after the expiry of the basic agreed rental period are regarded as being integral parts of the overall transaction, so that the criterion of the permissible maximum credit period applies inclusive of all of these. This also holds true if there is no intention to insure the receivables in respect of the residual value.

Payment of the leasing instalments must not be at more than **six month intervals** under the OECD Consensus. The combination of this maximum interval permitted between rental instalments and the maximum permissible credit period can in certain circumstances mean that there are restrictions placed on the size of the residual value instalment: in order to determine whether the payment terms chosen for a particular transaction still fall within the permissible parameters, the total order value (capital plus financing costs) is divided into equal six-monthly instalments over the entire maximum permissible credit period. The leasing instalments must be sufficiently high so that the amount paid is always at least equal to that which would be due if six-monthly instalments had been agreed. Payment terms which envisage relatively low leasing instalments and a high residual value (or a high final instalment) may therefore be problematic from the perspective of the Consensus.

In transactions with credit periods exceeding 2 years, **cash payments** in an amount corresponding to 15% of the total order value (where appropriate as the initial leasing instalment) must be made. Instead of the normal practice in sales transactions on credit terms of calculating interest on reducing balances, in leasing it is permissible to set equal leasing instalments (**annuities**) by dividing up the financing costs between the individual instalments.

WHAT IS THE OBJECT OF COVER?

The actual object of cover in the case of full payment leasing is the total amount of the instalments agreed under the leasing contract. In residual value leases, the amount due under the final residual value payment can also be covered in addition to the leasing instalments, if and when it is contractually enforceable against the lessee – e.g. on the basis of a pre-emptive tender right or an agreed share in any shortfall in proceeds from the sale of the leased asset. Cover can also remain restricted to the leasing instalments, however.

Claims for damages are not included in cover pursuant to the General Terms and Conditions. This also applies to contractual rights to compensation, e.g. in the event that the lessee does not return the object of the lease on expiry of the lease period or following premature cancellation of the lease, in contravention of his contractual obligations.

In contrast to these claims, the amounts due under a cancellation due to payments falling into arrears, which assume the status, under the leasing contract, of the leasing payments originally agreed as consideration (surrogate claims) are eligible for cover.

Manufacturing risks incurred in connection with a leasing transaction may also be covered. Such manufacturing risk cover is always assumed in favour of the lessor. If the manufacturer and the lessor are not identical, the only option open to the manufacturer to benefit from the manufacturing risk cover is therefore by way of securing an assignment from the lessor.

WHAT RISKS ARE COVERED?

Leasing cover offers protection against the political and commercial risks involved in cross-border leasing transactions.

THE COVERED POLITICAL RISKS INCLUDE

- legislative or administrative measures, war, hostilities, rebellion, insurrection, revolution, riot or civil commotion abroad which prevent the payment or collection of the guaranteed amount (the political risk as generally defined);
- the non-conversion and non-transfer of amounts duly paid by the debtor in local currency due to measures which impede the international movement of payments (the conversion and transfer risk);
- the loss of the right to payment due to contract frustration as a result of political actions;
- the loss or destruction of the goods prior to the passing of risk as a result of political actions.

THE COMMERCIAL RISKS COVERED ARE

- the uncollectability of receivables due to the insolvency of the foreign buyer, e.g. as a result of bankruptcy or insolvency proceedings, an arrangement with creditors either in or out of court, the failure of an executory judgement to bring full satisfaction, suspension of payments;
- failure to pay within 6 months following due date (protracted default).

WHAT PERIOD IS COVERED?

The Federal Government's liability to indemnify under leasing cover commences – exactly as in a sale transaction – with the dispatch of the leased asset. It only terminates when payment of the covered amounts due under the leasing contract has been fully and finally discharged. In the case of leasing cover with up-front manufacturing risk cover, the liability to indemnify under the manufacturing risk cover ends with the dispatch or acceptance of the leased asset, whichever is earlier. Liability to indemnify under leasing cover then commences at the point at which manufacturing risk liability ends.

ON WHAT CONDITIONS IS FEDERAL GOVERNMENT LEASING COVER AVAILABLE?

STANDARD CONDITIONS (SUPPLIER CREDIT CONDITIONS)

Under normal circumstances leasing cover is assumed on the same conditions as supplier credit cover (General Terms and Conditions for Supplier Credit Guarantees). The uninsured percentage, normally 5% in the case of political claims and 15% for commercial claims customary in such cover, is therefore applicable. This percentage of the claim to be borne for his own account by the exporter may not be insured or otherwise secured elsewhere, but it is permissible to pass it on to the manufacturer of the leased asset.

The claims waiting periods (the period before the insured event is deemed to have occurred) are six months in the case of the general political event of loss and in protracted default and three months in the case of non-conversion and non-transfer. The claim is processed within two months from the receipt of the full claims documentation; payment of the indemnifiable amount is made within a period of one month following notification of the claims settlement.

Just as in the case of supplier credits, the Federal Government will only indemnify a claim if and when the legal validity of the covered receivables in respect of the leasing transaction has been clearly established and is undisputed. If the lessee refuses to pay the leasing instalments claiming defects under the warranty provisions of his contract, no indemnification can be made. This also applies when the debtor is only entitled to enforce warranty claims under his contract exclusively against the manufacturer.

ENHANCED CONDITIONS (BUYER CREDIT CONDITIONS)

In certain leasing models which are largely equivalent to a buyer credit in their effect, leasing cover is available on enhanced conditions (buyer credit conditions). This means specifically:

- the uninsured percentage is 5% for all risk types. It is not permissible to pass on the uninsured percentage to the manufacturer.
- shorter claims waiting, processing and payment periods: on enhanced conditions, all the claims waiting times and processing are reduced to one month, and claims payment is made within five bank days.
- recognizing the abstract validity of the leasing contract for claims purposes irrespective of flaws in performance: if the lessee refuses to pay the lease instalments claiming defects in performance under the warranty provisions of his contract, this shall not have any effect on the right to indemnification under leasing cover.

Leasing cover on such enhanced conditions can only be given if and when the leasing transaction concerned is largely equivalent in effect to a buyer credit. The preconditions for this are specifically that:

- the lease should involve capital goods and have a permissible credit period exceeding 2 years;
- it is indirect finance leasing (i.e. the lessor is not the manufacturer of the asset, but a leasing company);
- the contract stipulates the abstract validity of claims under the leasing contract irrespective of flaws in performance, i.e. the lessor is released from warranty obligations, in combination with the assignment of his own rights under warranty provisions in respect of the asset to the lessee;
- the lessor is domiciled in Germany and is considered to observe standards of due diligence comparable with those of a bank. This is generally deemed to be the case if the lessor is licensed to do banking business or is included in the consolidated accounts of one or more domestic banks. In addition, other leasing companies (leasing companies which are independent from the manufacturer or belong to the same group) may be recognized as fulfilling these requirements after individual examination.

It is also mandatory for the manufacturer to give a so-called letter of undertaking. In this, the manufacturer undertakes to provide directly to the Federal Government all and any information necessary for the granting of the leasing cover; he recognizes the right of the Federal Government to give him binding instructions and accepts the obligation to release it from its liability to indemnify the lessor under certain circumstances. The manufacturer's obligation to release the Federal Government from its liability to indemnify is first and foremost effective in the event that the lessee refuses to pay the leasing instalments claiming defects in performance under the warranty provisions of his contract, and this results in a covered loss.

SPECIAL FEATURES IN CONNECTION WITH RESIDUAL VALUE LEASES

When granting cover for residual value leasing contracts, the Federal Government does not insist on a particular model, i.e. the form of the leasing contract does not have to comply with the leasing decrees issued by the financial authorities in the Federal Republic of Germany. There may however be certain restrictions placed on the residual value amounts under the criteria of the OECD Consensus set out above.

As an alternative to covering the amount due for the residual value payment, the material risk of confiscation of the leased asset may be covered. Confiscation cover insures against the risk that the leased asset cannot be returned or can only be returned in such a state that its value is reduced as a result of political actions.

FEES AND PREMIUM

Handling fees are charged for processing an application for export credit guarantee cover. These consist of an application fee and an issuing fee.

A premium is charged for the granting of leasing cover. It is calculated on the basis of the premium rates fixed by the Ministry for Economic Affairs and Climate Action for credit risk cover. Insurance tax is not payable.

Further details can be found in the brochure "Fees and Premium Rates". An interactive premium calculator for calculating your individual premium is available on our website.

WHAT MUST BE CONSIDERED WHEN AN APPLICATION IS SUBMITTED?

When an application is made, the leasing transaction has to be described in detail. This description is given on the application form normally used to apply for export credit guarantees. Additional details – regarding in particular the ownership of the leased asset – will be requested in the attachment to the application.

If leasing cover on enhanced conditions is applied for, the manufacturer of the leased asset has to provide a letter of undertaking in addition.

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:

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 under the heading Promotion of Foreign Trade and Investment.

Euler Hermes Aktiengesellschaft

Postal address:
P.O. Box 50 03 99
22703 Hamburg, Germany

Office address:
Gasstraße 29
22761 Hamburg, Germany

Phone: +49 (0)40 / 88 34-90 00
Fax: +49 (0)40 / 88 34-91 75

info@exportkreditgarantien.de
info@ufk-garantien.de
www.agaportal.de/en

Branch offices: Berlin, Dortmund, Frankfurt, Freiburg/Stuttgart, Hamburg, Munich, Nuremberg, Rhineland

09 1602e 0522