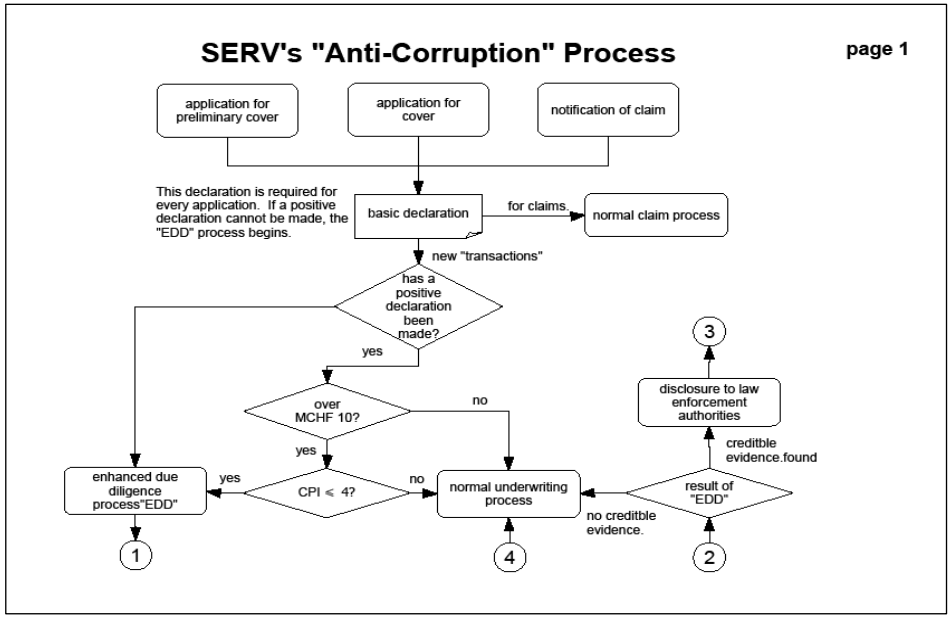
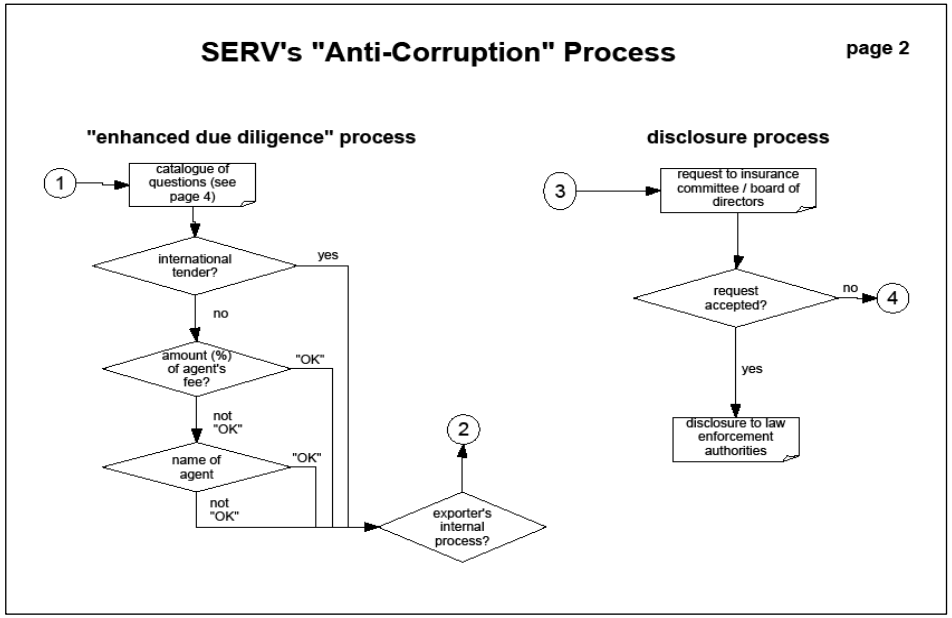
Attachment B:





Attachment C: SERV's Anti-Corruption Process

Catalogue of Questions: Anti-corruption

for internal SERV-use only

General Questions

Internal Processes

1 Does the exporter have an internal programme against corruption? Can documentation be provided?
2 Does the exporter have an internal defense (against corruption) plan?
3 Has this plan been published and where has it been published?
4 Does the exporter have procedures in place in case of corruption?
5 Has the exporter set up a contact point that will help answer questions on the internal processes?

Questions on Tenders, Contract and Financing

6 Was there an international tender?
7 If no, why not, e.g. the criteria for the invited tender process.
8 Is there a separate loan agreement or is this a part of the delivery contract?
9 Who signed the delivery contract (e.g. position within a ministry or position within the company)?
10 Were the signatures notirised and if yes, from whom (e.g. the Swiss embassy)?
11 In the case of a separate loan agreement: who signed the loan agreement (e.g. position within a ministry)?
12 Were the signatures notarised and if yes, from whom (e.g. the Swiss embassy)?
13 Bank's due diligence: Was the bank present at the signing of the delivery contract and / or loan agreement?

Detail Questions

Intermediary / Agent / Consultant

14 Was an intermediary/agent/consultant used (even partially) to close the transaction?
15 Who is the intermediary/agent/consultant (name, address and telephone and, if this person is an employee, the name of the owner/director/senior manager)?
16 How was the intermediary/agent/consultant chosen?
17 What other organisations (other exporters, companies) does the intermediary/agent/consultant represent?
18 Since when is the intermediary/agent/consultant active for your company?
19 Was a commission paid?
20 To whom was the commission paid (name, address and telephone)?
21 How high was the commission (in CHF and / or percent of delivery contract)?
22 Please describe the services for which the commission was paid.
23 When – in relation to the course of the transaction – was/will the commission be paid?

Delivery Contract

24 Is there a maintenance contract?
25 What is the tenor of the maintenance contract?
26 What portion - in percent - of the delivery value does the maintenance contract represent?
27 Which services are included (e.g. maintenance, training, spare parts, supplies and man hours according to profession and divided into local and international employees)?

These questions are meant as a guide for a discussion with the exporter / bank should the enhanced due diligence process need to be carried out.

Attachment D:

Part I. Prevention of Corruption in Connection with SERV Export Credit Insurance

Introduction
Since the end of the 1990s, increasing importance has been attached to combating corruption at both national and international level. Switzerland has undertaken several international agreements to make corrupt practices – be they at home or abroad – a criminal offence.

As the official export credit agency (ECA) of Switzerland, SERV is regulated under public law and therefore bound by the "OECD Recommendation on Bribery and Officially Supported Export Credits (2006)", which came into force on 1 January 2007. Any insurance cover arranged with SERV therefore requires a so-called anti-corruption declaration to be signed by the proposer and, in the case of stand-alone buyer credit insurance, by the exporter as well. This declaration implements the provisions of the OECD Recommendation and constitutes an integral component of SERV's formal application requirements.

Both during the proposal process and after insurance cover has come into force, the insured is required by Art. 16 para. 1 SERVG (the Swiss Export Risk Insurance Act) and Art. 8 SERV-V (the Swiss Export Risk Insurance Ordinance) to supply SERV with full, accurate information about all the circumstances of the export transaction that are material to the assessment and processing of the export credit insurance. This also includes answering SERV's questions regarding the identity of persons who are or were involved on their behalf in arranging the export contract (e.g. agents) and the reason for and amount of any payments to those persons.

The anti-corruption declaration applies to all components of the insurance cover to which the proposal relates. Non-essential changes to the export credit covered, such as an extension of the contract due to a delay in the transaction, are covered by the original declaration. It is not necessary to make another declaration unless the nature of the transaction has undergone such a radical change that it is in effect an entirely different transaction (e.g. a switch to a different foreign export-contract partner prior to signature). If the insurance application is submitted on behalf of a consortium or a syndicate (Arbeitsgemeinschaft – ARGE), the declaration has to be submitted by all participants.

If the proposer can sign the anti-corruption declaration only with reservations or not at all, or if any conditions to which it is subject no longer exist at the time of a subsequent claim, then thorough enquiries must be made when the proposal or claim is processed. The purpose of this "enhanced due diligence" process is to check whether any corruption-relevant situation exists in connection with the transaction that is the subject of the proposal or claim. If the result of this check is positive, the consequences under the OECD Recommendation are as follows:

a) a decision on the proposal or claim is postponed until the suspicion has been thoroughly investigated and resolved;
b) if corruption is shown to have occurred, the proposal or claim is declined and the recipients of any compensation already paid are called on to repay it. The criminal prosecution authorities must be notified.

Legal information:
Swiss criminal law on corruption makes the bribery of foreign public officials a criminal offence. The relevant provisions of the Swiss Penal Code (SPC, SR 311.0) are worded as follows:

Art. 322ter of the SPC – Bribery of Swiss public officials
Anyone offering, promising or granting an undue advantage to a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army in connection with their official activity, in return for any act or omission to his/her benefit or to the benefit of a third party that is in breach of their duty or at their discretion shall be punished with imprisonment for up to five years or a fine.

Art. 322quinquies SPC – Granting of advantages
Anyone offering, promising or granting an undue advantage to a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army with regard to the performance of their duties shall be punished with imprisonment for up to three years or a fine.

Art. 322septies SPC – Bribery of foreign public officials
Anyone offering, promising or granting an undue advantage to a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army working for a foreign state or an international organisation, in connection with their official activity, in return for an act or omission to his/her benefit or to the benefit of a third party that is in breach of their duty or at their discretion,

anyone who, as a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, an arbitrator or a member of the army of a foreign state or of an international organisation, asks for, obtains the promise of or accepts in connection with their official activity an undue advantage for him/herself or a third party in return for an act or omission that is in breach of his/her duty or at his/her discretion, shall be punished with imprisonment for up to five years or a fine.

Art. 322octies SPC – Common provisions
2. Advantages allowed under public service law as well as minor favours customary in society shall not be deemed to be undue advantages.
3. Private individuals who perform public duties shall be put on a par with public officials.

The Swiss Federal Unfair Competition Act (UCA, SR 241) makes private bribery a criminal offence as follows:

Art. 4a UCA – Offering and accepting bribes
A person shall be deemed to be acting unfairly if he/she offers, promises or grants an undue advantage to an employee, a partner, a representative or other assistant of a third party in the private sector in connection with their official activity, in return for an act or omission to his/her benefit or to the benefit of a third party that is in breach of their duty or at their discretion;

as employee, partner, representative or other assistant of a third party in the private sector, asks for, obtains the promise of or accepts in connection with his/her official or commercial activity an undue advantage for his/herself or a third party for an act or omission that is in breach of his/her duty or at his/her discretion.

Advantages approved contractually by the third party, as well as minor favours customary in society shall not be deemed to be undue advantages.

Art. 23 UCA – Unfair competition
1. Anyone who deliberately engages in unfair competition as per Articles 3, 4, 4a, 5 or 6 shall upon application be punished with imprisonment of up to three years or with a fine.
2. Anyone who under Articles 9 and 10 is entitled to bring a civil action can institute criminal proceedings.

For the criminal liability of enterprises under the SPC and the UCA, the following also applies:

Art. 102 SPC – Criminal liability and responsibility of enterprises
If anyone in a company has committed a crime or an offence in the exercise of their business duties pursuant to the company's purpose, but, because of shortcomings in the company organisation, this act cannot be attributed to a specific natural person, then the crime or offence shall be attributed to the enterprise. In this case the enterprise shall be punished with a fine of up to CHF 5 million.

If a criminal offence as per Articles 260ter, 260quinquies, 305bis, 322ter, 322quinquies or 322septies, paragraph 1, is involved, or one in accordance with Article 4a, paragraph 1(a), of the Swiss Federal Unfair Competition Act of 19 December 1986, then the enterprise shall be punished irrespective of the criminal liability of natural persons if the company can be accused of failing to take all necessary and reasonable organisational measures to prevent such a criminal offence.

The court shall determine the fine in particular on the basis of the gravity of the offence and the seriousness of the organisational deficiency and the damage caused, as well as on the basis of the company's financial strength.

For the purposes of this Article, the following shall be deemed to be enterprises:
a) legal persons under private law;
b) legal persons under public law, with the exception of central, regional and local authorities;
c) companies;
d) sole proprietorships.

The criminal provisions of the Swiss Export Risk Insurance Act should also be noted:

Art. 36
Anyone deliberately committing any of the following acts shall be punished by imprisonment for up to one year or a fine:
a) effecting an insurance policy or obtaining a payment under an insurance policy for himself or another by giving false or incomplete information;
b) evading a delivery or repayment obligation under Articles 19 paragraph 2 sentence 2 and 20 by giving false or incomplete information;
c) failing to fulfil his obligation to avoid losses under Article 16 paragraph 2 ;
d) failing to fulfil his obligations under Article 19 paragraph 2 to assist SERV in the recovery or disposal of undelivered exported goods.

Such an action is a criminal offence even if committed abroad.

The right to bring a prosecution on the basis of the special provisions of the Swiss Penal Code is reserved in all cases.

Responsibility for bringing prosecutions lies with the cantons. The Office of the Prosecutor General must be notified in full and without delay of all convictions and orders to discontinue proceedings.

Attachment D:

Part II. SERV's Corruption Prevention Confirmation

1. Antikorruptionserklärung Exporteur

(L-, F-, V- und B-Deckungen, sowie bei kombinierter L-K-Deckung)

Die Antragsstellerin hat davon Kenntnis genommen, dass Voraussetzung für die Erteilung und Gültigkeit einer Versicherung ist, dass im Zusammenhang mit dem diesem Antrag zu Grunde liegenden Exportvertrag die schweizerischen Gesetzesvorschriften eingehalten sind und werden.

Wir bestätigen, dass:

1. weder wir noch für uns handelnde Personen wie Mitarbeiter oder Beauftragte Handlungen zur Bestechung von Amtsträgern ausländischer Staaten oder von Vertretern internationaler Organisationen noch sonstige strafbare Handlungen vorgenommen haben oder vornehmen werden, um den Abschluss des Exportvertrags / Kreditvertrags herbeizuführen oder einen anderen nicht gebührenden Vorteil im Zusammenhang mit dem zur Deckung beantragten Geschäft zu erwirken.

2. wir nicht auf öffentlich zugänglichen Ausschlusslisten der Weltbankgruppe, der Afrikanischen Entwicklungsbank, der Asiatischen Entwicklungsbank, der Europäischen Bank für Wiederaufbau und Entwicklung oder der Interamerikanischen Entwicklungsbank aufgeführt sind.

3. weder gegen uns noch gegen im Zusammenhang mit dem zur Deckung beantragten Geschäft für uns handelnde Personen wie Mitarbeiter oder Beauftragte wegen Bestechung von Amtsträgern ausländischer Staaten oder von Vertretern internationaler Organisationen

   a) eine Anklage hängig oder

   b) in den letzten fünf Jahren

      b.1) ein Urteil ergangen ist oder

      b.2) staatliche Administrativmassnahmen angeordnet worden sind.

Auskunftspflicht

Uns ist bekannt, dass wir im Antragsverfahren und nach Übernahme der beantragten Versicherung über alle Umstände des Exportgeschäfts, die für die Übernahme der Exportkreditversicherung erheblich sind, vollständig und richtig Auskunft zu erteilen haben. Dies umfasst auch die Beantwortung von Fragen der SERV hinsichtlich der Identität von Personen, die in unserem Auftrag am Abschluss des Exportvertrages beteiligt sind oder waren (Agenten), sowie über Grund und Höhe allfälliger Zahlungen an diese Personen.

Hinweis

Insbesondere die Art. 102, 322 ter, 322 quinquies, 322 septies und 322 octies StGB, die Art. 4a und 23 UWG sowie die Strafbestimmungen des Art. 36 SERVG haben wir zur Kenntnis genommen.

2: Antikorruptionserklärung Bank

(Käuferkredit - immer)

Die Antragsstellerin hat davon Kenntnis genommen, dass Voraussetzung für die Erteilung und Gültigkeit einer Versicherung ist, dass im Zusammenhang mit dem diesem Antrag zu Grunde liegenden Kreditvertrag die schweizerischen Gesetzesvorschriften eingehalten sind und werden.

Wir bestätigen, dass:

1. weder wir noch für uns handelnde Personen wie Mitarbeiter oder Beauftragte Handlungen zur Bestechung von Amtsträgern ausländischer Staaten oder von Vertretern internationaler Organisationen noch sonstige strafbare Handlungen vorgenommen haben oder vornehmen werden, um den Abschluss des Kreditvertrags herbeizuführen oder einen anderen nicht gebührenden Vorteil im Zusammenhang mit dem zur Deckung beantragten Geschäft zu erwirken.

2. wir nicht auf öffentlich zugänglichen Ausschlusslisten der Weltbankgruppe, der Afrikanischen Entwicklungsbank, der Asiatischen Entwicklungsbank, der Europäischen Bank für Wiederaufbau und Entwicklung oder der Interamerikanischen Entwicklungsbank aufgeführt sind.

3. weder gegen uns noch gegen Personen wie Mitarbeiter und Beauftragte, die im Zusammenhang mit dem Exportgeschäft, das dem zur Deckung beantragten

Geschäft zugrunde liegt, für uns handeln, wegen Bestechung von Amtsträgern auslandischer Staaten oder von Vertretern internationaler Organisationen

a) eine Anklage hängig oder

b) in den letzten fünf Jahren

b1 ein Urteil ergangen ist oder

b2 staatliche Administrativmassnahmen angeordnet worden sind.

Auskunftspflicht

Uns ist bekannt, dass wir im Antragsverfahren und nach Übernahme der beantragten Versicherung über alle Umstände des Kredit- und des Exportgeschäfts, die für die Übernahme der Exportkreditversicherung erheblich sind, vollständig und richtig Auskunft zu erteilen haben. Dies umfasst auch die Beantwortung von Fragen der SERV hinsichtlich der Identität von Personen, die in unserem Auftrag am Abschluss des Kredit- oder des Exportvertrages beteiligt sind oder waren (Agenten), sowie über Grund und Höhe allfälliger Zahlungen an diese Personen.

Hinweis

Insbesondere die Art. 102, 322 ter, 322 quinquies, 322 septies und 322 octies StGB, die Art. 4a und 23 UWG sowie die Strafbestimmungen des Art. 36 SERVG haben wir zur Kenntnis genommen.