



Recourse

Recourse: what is it?

In the context of ECGD supported financing facilities, its right of recourse is to recover from an exporter (and any other parties who have agreed to provide backing) all or part of any claims payment which has had to be made to a financing bank, at a time when the exporter has failed to meet any of the conditions of its contract with the overseas buyer.

Why do we need a right of Recourse?

In simple terms, if you the exporter fail to perform under a contract there is an increased risk that the overseas buyer or borrower will not make payment to you or to the bank, which has financed your transaction.

Under the terms of ECGD's insurance cover to exporters under an Export Insurance Policy, ECGD may either decline liability if an exporter's non-performance leads the buyer to default on payment, or suspend consideration of a claim whilst a dispute exists between an exporter and a buyer.

In cases where ECGD has given cover to a bank (under a Buyer Credit or Supplier Credit Finance facility), to support the financing of a contract, ECGD will be obliged, under the terms of its guarantee, to pay the bank if the borrower does not repay the loan. This obligation exists irrespective of any non-performance by the exporter or the occasion of any dispute under the contract. However ECGD will seek to minimize its loss to the greatest extent possible where claims have been paid to a bank in circumstances where the exporter is in breach of the terms of its contract. ECGD therefore reserves the right in such circumstances to claim from the exporter some or all of the money paid to the bank.

Can financing facilities be provided without Recourse?

ECGD will normally require you the exporter to enter into a recourse obligation when ECGD provides support for a loan to finance your contract. However, recourse will not be required, save in exceptional circumstances, where the contract is for the supply of goods for which you as an exporter have an established track record, and where any related services do not constitute more than 10 per cent of the contract value.

When would we take Recourse?

ECGD can exercise its right to recourse when it has paid a claim to the bank financing your contract at a time when you as exporter are in default under the contract, and where such default remains unremedied, or in circumstances where the contract has been terminated by the buyer owing to your default. You should note that under the terms of the Recourse Agreement ECGD does not have to prove a causal link between your contractual default and the bank's failure to receive payment for recourse to be taken.

That said, ECGD will not generally take recourse to you if we are satisfied that your contractual default is neither material nor substantial nor has it been caused by one of the following events:

- An act or omission by the buyer neither induced nor provoked by you;
- The prevention of, or delay in, the transfer of funds in respect of your contract resulting from the occurrence outside the UK of political events, economic difficulties, legislative or administrative measures, or a general moratorium;
- Any measure or decision (including the non-renewal of an export licence) of any government other than that of the UK which, in whole or in part, prevents performance of your contract;
- The occurrence outside the UK of hostilities, civil disturbance or natural disaster which, in whole or in part, prevents performance of your contract;
- The cancellation or non-renewal of a UK export licence; and
- Any restrictions introduced in the UK after the date of your contract which prevent performance of the contract, other than the refusal to grant a UK export licence or other authorisation necessary for performance of the contract if such authorisation was required at the date of the contract.

From whom would Recourse be sought?

Recourse would be sought from the UK exporter. However, others may be required to support the exporter's financial obligations. Where you as the exporter are a member of a group of companies ECGD will, in most cases, expect the immediate and ultimate parent companies also to join in the recourse arrangement with it.

Additionally, if any of the group companies (other than the exporter or its parents) have a major share of group assets, these companies could be brought into the arrangements too. Occasionally, a bank or major subcontractor may be required to join in so as to secure the exporter's recourse obligations.

Recourse, in all these instances, will be taken on a "Joint and Several" basis to the exporter and its recourse backers. This means that the exporter's recourse backers are considered to have a direct primary obligation to meet any recourse demand. However, in practice, the parent company /companies or other recourse backers should need to meet the recourse demand only where you the exporter fail to do so promptly.



Decisions as to from whom ECGD will seek recourse will be made on a case-by-case basis. ECGD will need to study the exporter's (and potentially other group companies') financial accounts and any other relevant information to assess how to establish appropriate recourse arrangements.

Amount of Recourse

ECGD always sets a limit on the amount of recourse for which you the exporter (and any recourse backers) may be liable. The exact amount on any individual case is decided by ECGD. This limit is written into the Buyer Credit Premium/Recourse Agreement or the Supplier Credit Finance Facility Recourse Agreement, and it is usually based on a percentage of our maximum liability under our guarantee (what ECGD calls the Maximum Liability or ML).

The minimum recourse limit is a figure representing 10 per cent of the ML. Although recourse can be set at any amount up to a maximum of 100 per cent of ML most cases attract the minimum limit.

It should be noted that the maximum amount that can be claimed by ECGD from you the exporter or any other recourse backers is the actual amount that we have paid in claims to the bank, up to but not exceeding the maximum recourse amount.

Factors which ECGD may take into account in establishing the recourse limit include the nature of goods or services being supplied, for example, whether the technology is well established, the creditworthiness and technical expertise of the buyer, the extent of the contractual obligations between you and the buyer; and your financial and technical standing.

Release from Recourse

You are freed from your recourse obligations once ECGD is satisfied that a contract has been completed to an agreed standard.

What if there are minor/residual problems regarding performance?

If you are unable to certify that all your obligations have been fully performed but can certify that there are only minor areas still to complete, ECGD will examine the evidence supporting the certification. In such a situation ECGD may agree to release you from recourse should it be satisfied that any failures in performance relate solely to minor and residual responsibilities.

Lloyds Recourse Indemnity Policy

As part of ECGD's ongoing commitment to assist smaller exporters, ECGD has agreed with Lloyds of London a form of Recourse Indemnity Policy. Exporters who would otherwise be unable to meet ECGD's normal recourse requirements may now be able to take out such a policy with Lloyds to provide support for their recourse obligations to ECGD.

For further information on the policy, please contact our Product Development and Support Branch on (+44) (0) 20 7512 7346.

Next Steps

If you would like to discuss the application of recourse to any particular case please contact the relevant underwriter.