

Issuer:	Riigikogu
Type:	act
In force from:	07.02.2022
In force until:	In force
Translation published:	08.02.2022

# State Export Guarantees Act<sup>1</sup>

Passed 29.10.2009  
RT I 2009, 52, 356  
Entry into force 10.11.2009

Amended by the following acts

Passed	Published	Entry into force
22.04.2010	RT I 2010, 22, 108	01.01.2011, enters into force on the date which has been determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, p. 24–26).
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, official titles of ministers replaced on the basis of subsection 4 of § 107 <sup>3</sup> of the Government of the Republic Act starting from the wording in force as of 1 July 2014
19.01.2022	RT I, 28.01.2022, 1	07.02.2022

## Chapter 1 GENERAL PROVISIONS

### § 1. Scope of application and purpose of Act

- (1) This Act provides the bases for and principles of grant of state export guarantees in Estonia.
- (2) The purpose of this Act is to create additional possibilities for the development of Estonian export and to protect Estonian undertakings against potential loss arising from export transactions through the grant of state export guarantees.
- (3) The Law of Obligations Act applies to contracts related to state export guarantees, taking account of the specifications provided for in this Act.

### § 2. Definitions

In this Act, the following definitions are used:

- 1) an export guarantee means an obligation guaranteed by the state arising from a written insurance contract complying with the conditions provided for in subsection 11 (1) of this Act and entered into between the provider of state export guarantees and the guarantee holder, which involves compensation for the loss incurred by the guarantee holder arising from the materialisation of risks guaranteed pursuant to this Act;
- 2) an export transaction means the sale of goods and the provision of services in a foreign state or the offering of goods for sale in a foreign state, as well as the investments and financing transactions related to these acts,

inter alia, direct or indirect investments in an undertaking located in a foreign state, the increasing of owners' equity in an undertaking located in a foreign state or the granting of loans to such undertaking;

3) a guarantee holder means an undertaking entered in the commercial register in Estonia or a company registered in another Contracting Party to the EEA Agreement which has a branch entered in the Estonian commercial register and which operates in Estonia through a branch if the undertaking or company has entered into an insurance contract which meets the conditions provided for in subsection 11 (1) of this Act and which is entered into with the provider of state export guarantees in order to compensate for the loss arising from the materialisation of at least one of the risks listed in this Act. In the case of buyer credit, a guarantee holder may also be a credit or financial institution registered in a foreign state or a branch operating in the name of the credit or financial institution which has the right to provide at least one of the financial services specified in clauses 6 (1) 1)–12) of the Credit Institutions Act in a foreign state and the financial supervision authority of the host country of which ensures sufficient supervision over the credit or financial institution or its branch and the foreign financial supervision authority has sufficient legal bases and possibilities for cooperation with the Financial Supervision Authority;

3<sup>1</sup>) an insured person means a guarantee holder or another legal person identified by name the risk related to whom is secured by an insurance contract which meets the conditions provided for in subsection 11 (1) of this Act;

[RT I, 28.01.2022, 1 – entry into force 07.02.2022]

3<sup>2</sup>) an intermediary means an insured person different from the guarantee holder determined in an insurance contract the risk related to whom the guarantee holder insures;

[RT I, 28.01.2022, 1 – entry into force 07.02.2022]

4) a debtor means a party to an export transaction whose obligations are secured by an insurance contract which meets the conditions provided for in subsection 11 (1) of this Act and which is entered into with the provider of state export guarantees. A person who provides surety or in any other manner secures the obligations of the debtor in an export transaction being guaranteed may also be deemed to be a debtor. The provider of state export guarantees and an insured person are not debtors for the purposes of this Act. A debtor may be a public debtor or a private debtor;

[RT I, 28.01.2022, 1 – entry into force 07.02.2022]

5) a public debtor is an agency or legal person performing the functions of a public authority which cannot be declared insolvent by court or administrative proceedings. If an agency or legal person performing the functions of a public authority wholly and unconditionally secures the obligations of a private debtor which are covered by an export guarantee, the latter is deemed to be a public debtor;

6) a private debtor is any debtor which is not public.

### **§ 3. Covered risks**

(1) An insurance contract entered into pursuant to this Act may prescribe state guarantees to the guarantee holder for total or partial compensation for the loss arising from an export transaction if the loss has been caused due to the materialisation of one or several of the following risks:

- 1) manufacturing risk;
- 2) credit risk;
- 3) investment risk.

(2) Manufacturing risk and credit risk are defined as commercial risks arising from debtors or political risks related to export transactions. Investment risk is defined as political risk related to export transactions.

(3) Commercial risks arising from private debtors are defined in clauses 4 1)–3) of this Act. In the case of a private debtor, the political risks related to export transactions are defined in clauses 4 4)–9) of this Act. In the case of a public debtor, the political risks related to export transactions are defined in clauses 4 2)–9) of this Act.

### **§ 4. Manufacturing risk**

For the purposes of this Act, manufacturing risk is an insured risk of the guarantee holder arising from suspension of performance of the contractual obligations or suspension of manufacture of the goods ordered due to the occurrence of at least one of the following circumstances:

- 1) insolvency of the private debtor and the person securing the obligations thereof;
- 2) non-performance of the contractual obligations of the debtor and the person securing the obligations thereof;
- 3) decision of the buyer of goods or services under a supplier credit to terminate or cancel the contract related to the export guarantee, or to refuse to accept the goods or services, without being entitled to do so;
- 4) any measure or decision of the government of a country other than the country of the guarantee holder which prevents performance of the contract related to the export guarantee;
- 5) moratorium decreed either by the government of the country of the debtor, or by that of a third country through which payment under the contract related to the export guarantee is to be effected;
- 6) political events, economic difficulties, or legislative or administrative measures which occur or are taken in a foreign state, and which prevent or delay the transfer of funds to be paid under the contract related to the export guarantee;
- 7) legislation passed in the country of the debtor declaring payments made by the debtor in local currency to be valid performance of the obligations, regardless of whether, as a result of changes in exchange rates, such payments cover the amount of the debt under the contract related to the export guarantee on the date of transfer of funds or not;
- 8) any measure or decision of the government of Estonia or the country of the guarantee holder, including measures and decisions of the European Union, relating to trade between Estonia and other countries, in so far

as the harmful effects of the measure or decision on the guarantee holder are not compensated otherwise by the government concerned;

9) cases of force majeure occurring in a foreign state, in so far as the effects are not covered by any other contract.

## **§ 5. Credit risk**

For the purposes of this Act, credit risk is an insured risk arising from non-performance of a financial obligation to the guarantee holder on the basis of the contract related to the export guarantee due to the occurrence of at least one of the circumstances listed in clauses 4 1)–9) of this Act.

## **§ 6. Investment risk**

(1) For the purposes of this Act, investment risk is an insured risk arising from the inability of the guarantee holder to exercise the rights thereof related to investments due to the occurrence of at least one of the circumstances listed below:

- 1) activities or omissions of public authorities of a foreign state related to investments made with an undertaking in a foreign state or any other circumstances related to public authorities but beyond the control of the guarantee holder, including restrictions on currency transfer and conversion;
- 2) nationalisation or expropriation, act of war, civil war, insurrection or other disorders in a foreign state related to the investments;
- 3) violation of a contract by the public authorities of a state which is a party to the contract.

(2) The primary rights related to investments specified in subsection (1) of this section are the rights arising from a holding, financing transaction or guarantee.

## **§ 7. Specifications concerning supplier credit and buyer credit**

(1) If, according to a contract providing for an export transaction, a debtor is required to pay to a supplier under the conditions of a credit contract, it is deemed to be supplier credit.

(2) If, a credit contract has been entered into in order to finance a contract providing for an export transaction and on the basis of the credit contract the creditor undertakes to pay to the supplier in the name of the debtor and the debtor undertakes to pay to the creditor under the conditions of the credit contract, it is deemed to be buyer credit.

# **Chapter 2**

## **BASES FOR STATE EXPORT GUARANTEES**

## **§ 8. Grant of export guarantees by state**

(1) The grant of export guarantees by the state shall be organised by the provider of state export guarantees who is an insurer engaging in credit insurance founded with state participation on the basis of the special rights provided for in § 14 of the Competition Act.

(2) The provisions of the Commercial Code and the Insurance Activities Act apply to the insurer specified in subsection (1) of this section (hereinafter *insurer*) together with the specifications arising from this Act.

(3) By entry into an insurance contract related to export guarantees, the insurer shall assume the obligation to fulfil the claims of the guarantee holder out of the technical provisions and own funds of the insurer and, to the extent provided for in subsection (7) of this section, out of the reinsurer's deposit unless a different rate for fulfilling the claims of the guarantee holder subject to fulfilment out of the reinsurer's deposit is agreed on in the reinsurance contract between the insurer and the state.

(4) Liability arising from export guarantees only extends to the principal obligations of the debtor and the insurer performs the obligations arising from an insurance contract related to export guarantees only if the guarantee holder is unable to fulfil a claim against the debtor. An insurance contract may prescribe the extension of liability arising from export guarantees to the obligation of the debtor to pay interest. In the event of materialisation of the investment risk, the liability shall cover non-contractual losses.

(5) A guarantee holder shall file the claims arising from an insurance contract against the insurer unless otherwise provided by this Act. If the correctness of a claim of the guarantee holder arising from an insurance contract related to the provision of export guarantees has been established by a court decision or by recognition of the claim by the insurer and the insurer lacks the funds necessary for fulfilment of the claim of the guarantee holder, the guarantee holder may file the claim arising from the insurance contract related to the provision of export guarantees to the state to the extent of the obligations of the insurer which have not been performed in

respect of the guarantee holder. The provisions of the Law of Obligations Act regarding surety apply to the liability of the state to perform the obligations of the insurer in respect of the guarantee holder, taking into account the specifications arising from this Act. The resolution of disputes between the state and guarantee holders arising from this Act is within the competence of county courts.

(6) In the case of insurance contracts related to export guarantees, the reinsurer is the state in respect of whom the Insurance Activities Act does not apply.

(7) Upon assumption of the obligation to guarantee arising from an insurance contract related to export guarantees, the potential claim of the guarantee holder is deemed to be guaranteed to the extent of 50 per cent out of the technical provisions and own funds of the insurer, but shall not exceed 10 per cent of the own funds of the insurer, unless otherwise agreed upon in the reinsurance contract entered into between the insurer and the state. The obligations of the insurer in so far as they exceed the limit specified in this subsection shall be performed out of the reinsurer's deposit.

(8) The Ministry of Economic Affairs and Communications shall decide on entry into a reinsurance contract on behalf of the state and shall represent the state upon entry into a reinsurance contract. The Ministry of Economic Affairs and Communications shall receive the approval of the Ministry of Finance for the conditions of the reinsurance contract before entry into the contract.

(9) The obligations of the state arising from acceptance of the insured risks shall be performed out of the reinsurer's deposit. If the funds in the reinsurer's deposit are insufficient for fulfilling the claims of the guarantee holder subject to fulfilment out of the reinsurer's deposit, the insurer has the right to fulfil such claims of the guarantee holder out of the technical provisions and own funds of the insurer. In such case, the insurer shall file a claim to the state to the extent of the claim of the guarantee holder which was subject to fulfilment out of the reinsurer's deposit but which was fulfilled out of the technical provisions and own funds of the insurer.

(10) The insurer shall keep separate accounts regarding the liabilities and assets arising from export guarantees and other activities of the insurer and the insurer shall ensure that the activities which are guaranteed by the state pursuant to this Act are not used for subsidising other activities of the insurer.

(11) If the insurer has entered into an insurance contract which is not in accordance with subsections 3 (1), 9 (1) and (4), 10 (2) or 11 (2) of this Act or the insurance contract does not contain the conditions provided for in subsection 11 (1) of this Act, performance of the obligations arising from such insurance contract out of the reinsurer's deposit is prohibited and state reinsurance and surety do not extend to such obligations.

(12) The insurer is required to submit to the Ministry of Economic Affairs and Communications a report on export guarantees granted pursuant to this Act, the amounts paid and the technical provisions calculated on the basis of insurance contracts related to the export guarantees and obligations performed out of the reinsurer's deposit once per quarter. The minister in charge of the policy sector has the right to obtain additional information from the insurer regarding technical provisions used for covering amounts likely to be payable and assets in the reinsurer's deposit.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014]

## **§ 9. Grant of export guarantees**

(1) An export guarantee shall be granted on the basis of an application for entry into an insurance contract and documents appended thereto or on the basis of an offer of the insurer.

(2) Before entry into an insurance contract related to an export guarantee, the insurer shall assess the covered risks related to the export transaction and shall take the risks into account upon grant of the export guarantee.

(3) The insurer shall enter into an insurance contract with the guarantee holder regarding grant of the export guarantee, which shall set out at least the conditions specified in subsection 11 (1) of this Act.

(3<sup>1</sup>) If the manufacturing period or credit period related to the grant of the export guarantee is or the specified periods together are shorter than two years, the export guarantee may also be granted in the case an insured person different from the guarantee holder has been determined in an insurance contract. If an intermediary is involved in an export transaction, the grant of the export guarantee is permitted on the condition that the goods are sold or the services are provided to the debtor and the obligation to pay for the goods or services arises for the debtor. If a claim arising from an export transaction against the debtor belongs to the intermediary, the claim against the intermediary must belong to the guarantee holder.

[RT I, 28.01.2022, 1 – entry into force 07.02.2022]

(3<sup>2</sup>) In the case provided for in subsection (3<sup>1</sup>) of this section, loss caused by the failure to satisfy a claim of an insured person different from the guarantee holder arising from an export transaction shall also be deemed to be loss caused to the guarantee holder. The provisions of this Act concerning a claim of the guarantee holder arising from an export transaction and a financial obligation to be performed to the guarantee holder by the debtor shall apply in the case provided for in subsection (3<sup>1</sup>) of this section in respect of a claim of an insured person different from the guarantee holder arising from an export transaction and an obligation to be performed to such insured person by the debtor.

[RT I, 28.01.2022, 1 – entry into force 07.02.2022]

(4) The Government of the Republic may, by a regulation, specify foreign states with regard to which export transactions are not guaranteed due to particularly high political or commercial risks.

(5) Mandatory supplementary conditions for contracts which concern guaranteeing export transactions jointly with other national institutions of Member States of the European Economic Community providing export credit insurance shall be established by a regulation of the Government of the Republic.

#### **§ 10. Refusal to grant export guarantee for export transaction**

(1) The insurer may always refuse to grant an export guarantee for an export transaction.

(2) The insurer shall refuse to grant an export guarantee if it has become evident that the guarantee holder has submitted false information in documents submitted for entry into an insurance contract.

#### **§ 11. Insurance contract**

(1) An insurance contract shall be entered into in writing and shall set out at least the following:

1) a condition according to which the insurer is held liable only if the guarantee holder cannot satisfy its claim against the debtor due to circumstances listed in clauses 4 1)–9) or in § 5 of this Act or if at least one of the circumstances specified in clauses 6 (1) 1)–3) of this Act materialises;

2) the extent of the retained risk of the guarantee holder;

3) the insurer's maximum liability;

4) the amount of the insurance premium and the conditions for payment thereof;

5) covered risks;

6) the obligation of the guarantee holder to pay the insurance premium;

7) the date on which the export guarantee enters into force;

8) credit period and, in the case of manufacturing risk, also the period of manufacture;

9) a reference to the fact that performance of the obligations of the insurer arising from the insurance contract is guaranteed by the state pursuant to this Act:

10) in the case provided for in subsection 9 (3<sup>1</sup>) of this Act, the name and registry code of the insured person different from the guarantee holder.

[RT I, 28.01.2022, 1 – entry into force 07.02.2022]

(2) An insurance contract may prescribe that a guarantee holder is compensated for the loss arising from an export transaction to the extent of up to 100 per cent upon materialisation of a political risk and to the extent of up to 95 per cent upon materialisation of a commercial risk.

(3) The insurer's maximum liability may be expressed in euros or in a currency convertible in Estonia which is quoted by the European Central Bank.

[RT I 2010, 22, 108 - entry into force 01.01.2011]

(4) An export guarantee does not extend to an insurance contract which contains a condition compliance with which does not depend on the guarantee holder and which grants the guarantee holder the right to:

1) amend or cancel the insurance contract or conditions contained therein, in particular to reduce the period of insurance or increase the insurance premium if the economic situation of the debtor deteriorates;

2) refuse to satisfy the claim if the debtor experiences solvency problems.

(5) Export guarantees do not extend to an insurance contract if the manufacturing period or credit period related to the insured risk is or the specified periods together are shorter than two years, unless the insured risk is, at the time of entry into the insurance contract, deemed to be an insured risk which is non-marketable according to the legislation of the European Union concerning state aid which regulate state export guarantees.

(6) The insurer has the right to require that a guarantee holder suspend export transactions with a debtor who fails to perform the payment obligation to the guarantee holder in compliance with the requirements or in respect of whom other circumstances become evident which according to reasonable expectations may result in failure to perform the obligations to the guarantee holder in compliance with the requirements. Export guarantees do not apply to loss which arises from the continuation of export transactions after the expiry of the term for the obligation to suspend export transactions.

#### **§ 12. Restrictions on grant of export guarantees**

(1) The total amount of obligations based on simultaneously valid insurance contracts related to export guarantees and entered into by the insurer pursuant to this Act shall not at any time exceed 400,000,000 euros.

[RT I, 28.01.2022, 1 – entry into force 07.02.2022]

(2) The total amount of the obligations set out in simultaneously valid insurance contracts related to export guarantees and entered into with one private debtor shall not exceed 10 per cent of the total amount of the obligations set out in the insurance contracts specified in subsection (1) of this section. The restriction specified in this subsection does not apply to a debtor which is a credit institution or a financial institution belonging to the consolidation group of the credit institution which is subject to the control of the financial supervision authority and holds a valid activity licence.

(3) A decision of the minister in charge of the policy sector may permit the insurer to grant an export guarantee which exceeds the total amount provided for in subsection (2) of this section if this is necessary to achieve the purpose of this Act and the risks related to the export guarantee are sufficiently managed. The minister in charge of the policy sector shall receive the approval of the Ministry of Finance for the decision beforehand.  
[RT I, 29.06.2014, 109 – entry into force 01.07.2014]

### **§ 13. Refusal to compensate for losses**

(1) The insurer has the right to refuse to compensate for a loss if one or several of the following circumstances have directly or indirectly caused the loss:

- 1) an act or omission by the guarantee holder or a person acting on behalf of the guarantee holder;
- 2) provisions unreasonably restricting the rights of the guarantee holder, which are included in the contract related to the export guarantee or in documents related to the contract and which aggravate the exercise of right of claim by the guarantee holder against the debtor;
- 3) an agreement between the guarantee holder and the debtor after entry into the contract related to the export guarantee which prevents or delays payment of the debt;
- 4) in the case of supplier credit, failure by sub-contractors, contracting parties or other suppliers to perform their obligations, provided that such failure is not caused by reasons related to political risks specified in clauses 4 4)–9) of this Act.

(2) An insurance contract may also prescribe circumstances not specified in subsection (1) of this section in the event of which the insurer has the right to refuse to compensate for losses.

### **§ 14. Reinsurer's deposit**

(1) In order to perform the obligations of the reinsurer arising from export guarantees on the basis of the insurance contracts which have been entered into, the state shall open a reinsurer's deposit at the insurer.

(2) The amount of the reinsurer's deposit shall be increased using the following funds:

- 1) funds allocated by the state for the performance of obligations arising from insurance contracts;
- 2) reinsurance premiums paid by the insurer the amount of which has been calculated in proportion to the insured risk accepted by the state, unless different principles of calculation of the reinsurance premium have been agreed upon in the reinsurance contract entered into between the insurer and the state;
- 3) funds received from the debtor as a result of reclamation of the obligations performed out of the reinsurer's deposit;
- 4) income related to investment of the corresponding assets to the reinsurer's deposit from which costs related to investment have been deducted.

(3) The insurer may perform out of the reinsurer's deposit only the reinsurer's obligations arising from export guarantees on the condition that sufficient proof is provided for the materialisation of the insured risk which is specified in this Act and which is guaranteed by an insurance contract complying with the conditions provided for in subsection 11 (1) of this Act and on the condition that sufficient proof is provided also for the loss of the guarantee holder arising from materialisation of the risk, and no circumstances exist which would preclude the insurer's obligation to perform the compensation obligation. The reinsurer's deposit is not part of the bankruptcy estate of the insurer and a claim for payment cannot be made thereon against the insurer in enforcement proceedings.

(4) The requirements and restrictions provided for in the Insurance Activities Act regarding investment of the committed assets of insurers shall be taken into account upon investment of the corresponding assets to the reinsurer's deposit.

### **§ 15. Insurance premium**

(1) For the purposes of this Act, an insurance premium is an amount of money determined by the insurer on the basis of the risk level of an export transaction and the extent of the retained risk of the guarantee holder and which is paid by the guarantee holder to the insurer in the amount and within the term specified in the insurance contract.

(2) Insurance premiums for export guarantees and investment income on the insurer's committed assets and the reinsurer's deposit, calculated on an insurance contract related to export guarantees, shall cover the costs relating to the grant of state export guarantees and any possible loss for a longer period and correspond to the risks covered, the insurer's maximum liability amounts arising from the insurance contract and the extent of the retained risk of the guarantee holder.

(3) The insurer may charge other justified fees related to the grant of export guarantees from the guarantee holder in addition to the insurance premium if the specified fees are agreed upon between the insurer and the guarantee holder.

#### **§ 16. Notification procedures**

The insurer shall inform the European Commission and the export credit insurance organisations of the Member States of the European Union acting on behalf of the State or with its support of the grant of export guarantees pursuant to the procedure established by a regulation of the Government of the Republic.

## **Chapter 3 IMPLEMENTING PROVISIONS**

#### **§ 17. [Omitted from this text]**

#### **§ 18. Validity of earlier export guarantees**

Export guarantees granted pursuant to the State Export Guarantees Act shall remain valid and the provisions of this Act apply to the export guarantees.

#### **§ 19. Transfer of obligations to insurer**

Within a year after the entry into force of this Act, the Government of the Republic shall organise the transfer of the obligations related to the grant of state export guarantees and the corresponding assets from the foundation which has organised the grant of state export guarantees pursuant to the State Export Guarantees Act (hereinafter *foundation*) to the insurer. The provisions of §§ 87–94 of the Insurance Activities Act do not apply to the transfer of the obligations of the foundation related to the grant of export guarantees and the corresponding assets to the insurer.

#### **§ 20. Activities of foundation upon transfer of obligations to insurer**

(1) Until transfer of the obligations of the foundation related to the grant of state export guarantees to the insurer, the foundation shall organise the grant of state export guarantees.

(2) Until transfer of the obligations of the foundation related to the grant of state export guarantees to the insurer, guarantee holders shall file the claims arising from insurance contracts against the foundation. If the technical provisions for export guarantees and the funds of the foundation are insufficient for the performance of its obligations, the state shall perform the obligations of the foundation arising from insurance contracts.

(3) The foundation shall organise the grant of state export guarantees on the basis of this Act. The provisions of subsections 8 (1)–(3), (5)–(12) and § 14 of this Act do not apply to the foundation.

(4) The principles of formation and the procedure for calculation of technical provisions of the foundation for the grant of state export guarantees shall be established by a regulation of the Government of the Republic.

(5) The principles of and general restrictions on the management of foreign-exchange, credit and liquidity risks and other financial risks of the foundation related to the management of the funds arising from state export guarantees shall be established by a regulation of the Government of the Republic.

(6) The foundation shall comply with the requirements arising from legislation specified in subsections (4) and (5) of this section until the obligations of the foundation related to the grant of state export guarantees are transferred to the insurer.

#### **§ 21. Entry into force of Act**

This Act enters into force on the day following publication in the *Riigi Teataja*.

<sup>1</sup>Council Directive 98/29/EC on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover (OJ L 148, 19.05.1998, p. 22–32); Council Directive 84/568/EEC concerning the reciprocal obligations of export credit insurance organizations of the Member States acting on behalf of the State or with its support, or of public departments acting in place of such organizations, in the case of joint guarantees for a contract involving one or more subcontracts in one or more Member States of the European Communities (OJ L 314, 4.12.1984, p. 24–27).