

Euler Hermes Germany offers comprehensive long-term cover against preferential payment claims in insolvency cases of up to €2.5 million

HAMBURG - 18 SEPTEMBER 2014 – Euler Hermes Germany is one of the first credit insurers to offer long-term cover against losses arising from particular insolvency disputes, known as preferential payment claims. The new policy also pays over and above the credit limit for the first time. Under section 133 of the German Insolvency Code, an insolvency administrator can challenge payments already made during the last ten years and claim them from suppliers so that they can be added to the insolvency estates. This is intended to prevent placing individual creditors at a disadvantage. These claims can in some cases increase the bad debt risk for the suppliers concerned many times over, taking it above the credit limit. Preferential payment insurance covers precisely these losses.

When the insolvency administrator claims payment dating back up to 10 years

“If a preferential payment claim is made by an insolvency administrator, a supplier will be asked to return payments dating back up to ten years,” said Ulrich Nöthel, Euler Hermes Germany board member. “This can very quickly lead to high losses for companies and in the worst case scenario jeopardize their very existence. Our new preferential payment insurance offers appropriate long-term cover, and is a response to this risk specific to the German market.”

Federal Supreme Court case law: Burden of proof rests with supplier rather than insolvency administrator

In its current case law, the German Federal Supreme Court (Bundesgerichtshof, BGH) makes insolvency preferential payment claims much easier for insolvency administrators. The supplier must now prove that when the payment was received, its customer was not at risk of insolvency, despite evidence to that effect.

“It’s practically impossible for most companies to meet this burden of proof, because extensions and payment schedules can be seen as such evidence,” said Nöthel. “The Federal Supreme Court’s change to the burden of proof has thus made preferential payment claims even easier for the insolvency administrator. We are now seeing more and more cases of insolvency administrators calling in paid invoices covering a period of several years instead of only the last few months prior to insolvency. This means that invoices long since paid suddenly become outstanding debts again, significantly increasing the default risk for suppliers.”

Sample calculation: Amount of loss can easily multiply five- or even ten-fold

For example, a medium-sized business supplies goods with an annual value of €150,000 to a customer over a ten-year period. The credit limit on its commercial credit insurance is €200,000; the company does not exceed this at any point. When the customer files for insolvency, outstanding debts of €150,000 still remain from the last delivery. This loss is covered by its commercial credit insurance. Suddenly, the insolvency administrator also claims all payments already made in the past four years, i.e. €600,000 in total. His reasoning: there were repeated extensions and payment schedules during this period, therefore the supplier was aware of the potential payment default. As a result, its loss totals €750,000, five times higher than initially anticipated. Its conventional policy covers this up to the agreed credit limit of €200,000. But the company would be left with the remaining loss of €550,000, unless it had taken out preferential payment insurance against this in advance.

Terms of cover: Optional insurance amounts, transparent costs

Euler Hermes insurance is an add-on security package for traditional commercial credit insurance. It covers all losses arising from insolvency preferential payment claims in excess of the credit limit. Each company can choose from five different insurance amount options: €250,000, €500,000, €1 million, €1.5 million and €2.5 million. Higher insurance amounts are also possible subject to individual agreement. The premiums are 1 to 2% of the insurance amount per year depending on the option chosen.



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The 1,500 employees of Euler Hermes Germany are based at its headquarters in Hamburg and in other offices. More information: www.eulerhermes.de

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