

Receivables finance, forfaiting, risk participation and credit insurance

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A trader that sells on open account can finance its receivables by selling them to a bank or factor. In a receivables purchase, the bank buys approved receivables at a discount, with or without recourse to the trader. Under Swiss law the assignment requires a written form (Art. 165 para. 1 CO) but no notification to the debtor. Without notification, however, the debtor may pay the trader with discharging effect (Art. 167 CO), which is why banks require notification or a collection account.¹ Forfaiting is the purchase without recourse of receivables evidenced by bills of exchange or promissory notes, often guaranteed (*avalized*) by the buyer's bank, or of deferred payment obligations under documentary credits. The ICC and the International Trade and Forfaiting Association (ITFA) published Uniform Rules for Forfaiting (URF 800) in 2013.² The GP Global case described below shows the fraud risk inherent in receivables finance: a bank that pays against invoices without verifying that the buyer exists, has ordered the goods and will pay into the bank's account is financing paper.

Banks rarely keep all their trade finance risk. They distribute it in the secondary market through risk participations, in which another bank or an insurer assumes part of the credit risk in exchange for a share of the fee. Funded participations are distinguished from unfunded ones, which are documented on the Master Participation Agreement of the Bankers Association for Finance and Trade (BAFT).³ Credit insurance plays a similar role. Private credit insurers and the Lloyd's market cover the risk of nonpayment by buyers, while political risk insurers cover confiscation, war, inconvertibility and contract frustration. Many Lugano traders insure their buyer risk with a whole-turnover credit insurance policy and assign the policy proceeds to their bank, which allows the bank to treat the insured receivable as eligible in the borrowing base. The Swiss Export Risk Insurance (SERV), the federal export credit agency, may insure only export transactions in goods and services of Swiss origin or with an appropriate

share of Swiss value added, and it offers its cover as a complement to the private sector. It therefore plays only a limited role in pure transit trade, in which the goods neither originate in nor pass through Switzerland.⁴

In figures. The Federal Council estimated in 2020 that Swiss-based commodity trading was financed to 80–90 per cent by bank credit and that the financing provided to the sector amounted to about CHF 62 billion in 2016.⁵ Earlier industry estimates of USD 1.5 trillion for 2011 measured annual flows.⁶ The five largest Swiss-based traders raised revolving credit facilities of about USD 328 billion between 2013 and 2019, and one trader's prepayments grew from USD 700 million to USD 5 billion over the same period.⁷ The Federal Statistical Office counted 954 persons in commodity trade finance in Switzerland in 2022, of whom twelve worked in Ticino.⁸

1 Notes

1. CO, Art. 165 para. 1 ("An assignment is valid only if done in writing") and Art. 167 (payment in good faith before the debtor learns of the assignment), official English translation at [droit-bilingue.ch](https://www.droit-bilingue.ch/en-de/2/22/220-165-178.html), <https://www.droit-bilingue.ch/en-de/2/22/220-165-178.html> and <https://www.droit-bilingue.ch/en-de/2/22/220-167-180.html>. ↩
2. ICC and ITFA, Uniform Rules for Forfaiting (URF 800), ICC Publication No. 800 (Paris 2013). ↩
3. BAFT, Master Participation Agreement for Trade Transactions (first published 2008, revised several times). ↩
4. Federal Act of 16 December 2005 on the Swiss Export Risk Insurance (SERVA), SR 946.10, Art. 6 para. 1 let. d (cover "in Ergänzung zur Privatwirtschaft") and Art. 13 ("Lieferungen und Dienstleistungen ..., die schweizerischen Ursprungs sind oder einen angemessenen schweizerischen Wertschöpfungsanteil enthalten"), German and French text at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-fr/9/94/946.10-13-16.html), <https://www.droit-bilingue.ch/de-fr/9/94/946.10-13-16.html> and <https://www.droit-bilingue.ch/de-fr/9/94/946.10-6-9.html>. ↩
5. Federal Council, report of 26 February 2020 (above), 5. ↩
6. Allen, SWI [swissinfo.ch](https://www.swissinfo.ch), 3 July 2014 (above); Public Eye, Trade Finance Demystified (above), 4. ↩
7. Public Eye, Trade Finance Demystified (above), 16 and 26. ↩

8. See Chapter F.I, citing BFS, Statistik der Rohstoffhändler (above). ↩

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