



International Chamber of Commerce

*The world business organization*

Guidance Paper



ICC Commission on  
**Banking Technique and Practice**

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## Guidance Paper

**Guidance Paper on the Use of Sanction Clauses for Trade Related Products (e.g. Letters of Credit, Documentary Collections and Guarantees) subject to ICC Rules**

Document prepared by the Anti Money Laundering Task Force, ICC Banking Commission

### Highlights

- Inclusion and implication of sanction clauses in bank transactions
- Examples of sanction clauses
- Recommendations

## Guidance Paper

The Use of Sanction Clauses in Trade Related Products (e.g. Letters of Credit, Documentary Collections and Guarantees) subject to ICC Rules

### **ICC Banking Commission**

The ICC Banking Commission is a leading global rule-making body for the commercial banking industry as well as a worldwide forum of trade finance experts whose common aim is to facilitate international trade finance across the globe. The ICC Banking Commission has more than 500 members in 70 countries, many of them from emerging countries.

The Banking Commission is known for producing universally accepted rules and guidelines for documentary credits, documentary collections, bank-to-bank reimbursement and bank guarantees. ICC voluntary market-based approaches have often been praised for levelling the playing field in trade finance practices.

# ICC Banking Commission Guidance Paper

## The Use of Sanction Clauses in Trade Related Products (e.g. Letters of Credit, Documentary Collections and Guarantees) subject to ICC Rules

### 1. Introduction

- 1.1 The use of clauses related to sanctions has become a problematic issue for banks involved in international trade transactions and particularly letters of credit. Sanctions are imposed by the United Nations, the EU Council and individual countries. They seek to achieve political and economic ends by using trade as a means of foreign policy. Sanctions may prohibit dealings with specific countries, persons, ships, aircraft or goods especially with respect to import and export licensing of technology or controlled goods.
- 1.2 The enforceability of sanctions is a question to be decided by courts or national regulators or administrative agencies and is not an issue that can be addressed by rules of banking practice. Where sanctions are applicable, banks are compelled to comply with them in accordance with the applicable national law or regulation in the jurisdictions in which they operate. International rules of practice do not address how sanctions should be treated or their consequences under the rules.
- 1.3 Banks that operate in many different countries and jurisdictions are often subject to many conflicting regulatory requirements, and as such formulate policies to mitigate these legal risks. It is often not obvious that a bank operating in one country may be subject to regulations of another country that will affect their ability to complete a transaction containing cross-border elements.

### 2. The issue

- 2.1 Concerned about the implications of sanctions for their own obligations under trade related transactions, and seeking to notify correspondent banks and beneficiaries, banks have increasingly begun including so-called sanction clauses in transactions.
- 2.2 There is no standard for these clauses and they vary considerably in their scope. Where they simply inform the parties that the bank is subject to sanctions, they are generally unobjectionable. Where they address the obligations of a bank that has been affected by a governmental sanction, they may usefully supplement the applicable rules of practice.
- 2.3 In some jurisdictions, however, such “advice” would automatically cause the advising bank to reject and return the transaction as some countries have legislation that prohibits mention of “boycott” or “sanctions” language in any transaction.
- 2.4 In letter of credit transactions, where sanction clauses give the issuer discretion whether or not to honour, they bring into question the independent nature of the letter of credit and its irrevocability. Of particular concern are clauses that alter the reimbursement provisions of UCP 600 with respect to nominated banks that have acted pursuant to their nominations or that seek to shift the risk of compliance with sanctions to nominated banks.

- 2.5 As a result, even the most innocuous clause can cause problems with a transaction. Practice in respect of ICC rules of practice over the decades has always recognized that ultimately they are subject to local law. As the world has become more interrelated, the application of one country's laws to an apparently unrelated transaction has also increased. All practitioners and traders are expected to be aware of this, and should adjust their practices to reflect this commercial reality.
- 2.6 The issue relating to the implementation of sanctions related policy by banks causes a specific problem when considering the role of a confirming bank or a nominated transferring bank.
- 2.7 Where the clauses appear in the credit, the nominated bank is in a difficult position as it is not aware of the sanctions policies that the issuing bank will apply. It is now also uncertain as to whether it will be able to obtain reimbursement should it pay a conforming presentation. In the case of sanctions regulations there may be no possibility for payment to be made if the issuer finds that there is a sanctioned person or entity named in the documents.
- 2.8 As with all confirmation decisions, the risk assessment will not only include the risk of the issuing bank and the country, it will also assess whether there is likely to be a prohibited payment due to sanctions regulations. There is no solution to this problem.

### 3. Examples of sanction clauses

- 3.1 Below are examples of some of the common forms of the clauses being used in trade transactions.

- 3.2 An example of a simple informative sanction clause is:

"Presentation of document(s) that are not in compliance with the applicable anti-boycott, anti-money laundering, anti-terrorism, anti-drug trafficking and economic sanctions laws and regulations is not acceptable. Applicable laws vary depending on the transaction and may include United Nations, United States and/or local laws."

- 3.3 An example of a more complex sanction clause that brings into question the bank's obligation is:

"[Bank] complies with the international sanction laws and regulations issued by the United States of America, the European Union and the United Nations (as well as local laws and regulations applicable to the issuing branch) and in furtherance of those laws and regulations, [Bank] has adopted policies which in some cases go beyond the requirements of applicable laws and regulations. Therefore [Bank] undertakes no obligation to make any payment under, or otherwise to implement, this letter of credit (including but not limited to processing documents or advising the letter of credit), if there is involvement by any person (natural, corporate or governmental) listed in the USA, EU, UN or local sanctions lists, or any involvement by or nexus with Cuba, Sudan, Iran or Myanmar, or any of their governmental agencies."

- 3.4 Another problematic example:

"Trade and economic sanctions ('sanctions') imposed by governments, government agencies or departments, regulators, central banks and/or transnational organisations (including the United Nations and European Union) impact upon transactions involving countries, or persons resident within countries currently including Balkans, Belarus, Cote d' Ivoire (Ivory Coast), Lebanon, Liberia, Rwanda, Sierra Leone, Somalia, Syria, the Democratic Republic of Congo, Uzbekistan, Afghanistan, Iran, Iraq, Myanmar ( Burma), North Korea, Cuba, Zimbabwe and Sudan. Issuing bank and all of its related bodies corporate might be

subject to and affected by, sanctions, with which it will comply. Please contact issuing bank for clarification before presenting documents to issuing bank for negotiation or undertaking any dealings regarding this credit involving countries or persons affected by sanctions. Issuing bank is not and will not be liable for any loss or damage whatsoever associated directly or indirectly with the application of sanctions to a transaction or financial service involving issuing bank. Issuing bank is not required to perform any obligation under this credit which it determines in its discretion will, or would be likely to, contravene or breach any sanction. This clause applies notwithstanding any inconsistency with the current edition of the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits.”

#### 4. Recommendations

- 4.1 A sanction clause should not bring into question the bank’s commitment under a transaction to which it relates.
- 4.2 It is incumbent upon practitioners to make themselves aware of the need to be careful in their choice of counterparties or service suppliers. In the case of letters of credit and demand guarantees, it is also their responsibility to ensure that they do nothing that brings into question the irrevocable nature of the credit or guarantee, the certainty of payment or the intent to honour obligations, always understanding that the letter of credit or guarantee and the UCP, ISP or URDG have always been subject to the application of relevant local law.
- 4.3 Because the inclusion of such clauses is leading to increased confusion amongst the international trading and commerce community, it is recommended that practitioners, in transactions subject to ICC rules, refrain from including such clauses that bring into question the bank’s commitment or the irrevocable nature of a transaction, or where the use of such a clause is in conflict with local law. Where such clauses address the obligations of a bank that has been affected by a governmental sanction they may usefully supplement the applicable rules of practice.
- 4.4 Practitioners engaging in cross-border business should be aware that sanctions may be in force in other countries with which they are dealing and should take these issues into account in accordance with their company’s own risk policies.

# The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rules-setting, dispute resolution and policy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC enjoys a close working relationship with the United Nations and other intergovernmental organizations, including the World Trade Organization and the G8.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.



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**Policy and Business Practices**

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