



Ms. Leslie Devereaux
Sanctions Compliance & Evaluation
Office of Foreign Assets Control
U.S. Department of the Treasury
Washington, DC

Dear Ms. Devereaux

BAFT (the Banker's Association for Finance and Trade) is an international financial services trade association whose membership includes a broad range of financial institutions throughout the global community. As a worldwide forum for analysis, discussion, and advocacy in international financial services, BAFT member banks have an interest in interpreting and quickly adhering to any sanctions imposed by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury.

Following an initial review and evaluation of OFAC's recently imposed sectoral sanctions for the Ukraine, BAFT members expressed difficulty interpreting the requirements, particularly as they relate to trade finance. As a result, members have specific questions which require clarification in order to ensure strict compliance.

BAFT has gathered and consolidated these questions and requests that OFAC provide further guidance. Given the complexity of the subject matter, BAFT has endeavored to clearly describe the scenarios around each question and is willing to assist if further explanation is needed. Should that be the case, please contact Stacey Facter, BAFT SVP – Trade Products at (202) 663-5254 or by email at sfacter@baft.org.

In order to allow an efficient and expeditious response to the questions, BAFT would be interested in hosting a conference call or an in-person meeting where OFAC can address the questions directly to avoid future confusion or misinterpretation.

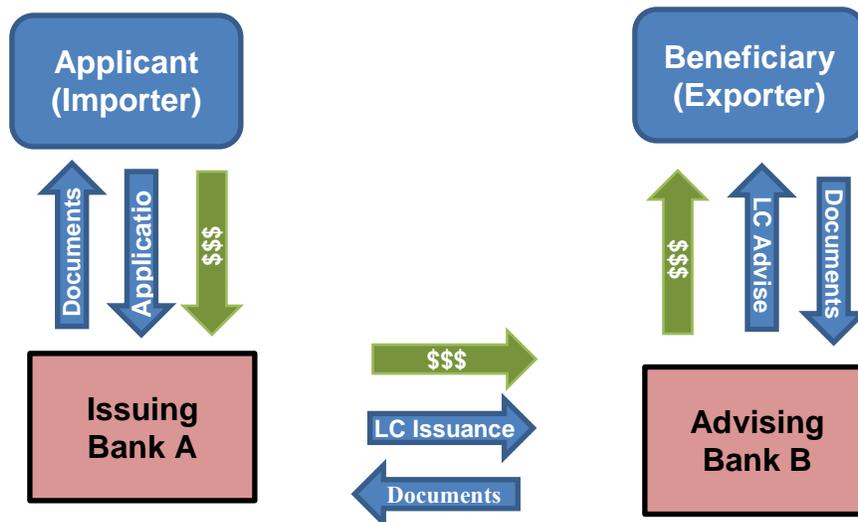
We greatly appreciate your attention to this request and look forward to further dialogue with OFAC on these issues going forward.

Sincerely,

A handwritten signature in black ink that reads "Tod R. Burwell". The signature is written in a cursive, flowing style.

Tod R. Burwell
President and CEO
BAFT

Documentary Letter of Credit Flow



Definitions

Advising Bank – The bank responsible for advising the Letter Credit (LC) at the request of the issuing bank (note, that the advising bank does not extend credit and has no obligation to pay, unlike a confirming bank)

Applicant – The importer of goods requesting the issuance of a Letter of Credit

Beneficiary – The party in whose favor an LC is issued, typically the exporter

Confirming Bank – An advising bank that has taken responsibility to pay the beneficiary against conforming documents

Issuing Bank – The bank that issues an LC at the request of an applicant in favor of a beneficiary

Participation – An agreement between a lending bank and a participating bank whereby the participant takes on a portion of a credit obligation of the lending bank

Sanction Party (SP) – An entity that appears on the Sectoral Sanctions Identifications (SSI) list

Sight LC – An LC which is payable upon presentation of conforming documents

Time LC – An LC which specifies the future date upon which payment must be made after presentation of conforming documents

Validity Period – The period of time from the date of issuance to the date of expiration of the LC

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Scenario 1 – Advising a Letter of Credit for an SP Issuing Bank

- Applicant

- **Bank A – SP Issuing Bank**

- Bank B - Advising Bank
- Beneficiary

1. Is it permissible for Bank B to advise Bank A's LC?
2. Does the response change based on the validity period of the LC? For example, if the validity period – date of issuance to date of expiry is 91 days.

Scenario 2 – Issuing or Advising an LC for an SP Applicant

- **SP Applicant**

- Bank A - Issuing Bank
- Bank B - Advising Bank
- Beneficiary

3. Is it permissible for Bank A to issue the LC at the request of the SP Applicant?
4. Does the response change based on the validity of the LC?
5. Is Bank B allowed to advise this LC at the request of Bank A? In this case Bank B would not have knowledge of the underlying transaction; it would only know the name of the SP Applicant that appears on the face of the LC, but would be unaware of the details of the financing.

Scenario 3 – Issuing an LC via an SP Advising Bank

- Applicant
- Bank A - Issuing Bank

- **Bank B – SP Advising Bank**

- Beneficiary

6. May Bank A issue an LC through Bank B (SP Advising Bank) requesting that Bank B (SP Advising Bank) advise the LC to the Beneficiary, a non-sanctioned party?

Scenario 4 – Issuing or Advising an LC to an SP Beneficiary

- Applicant
- Bank A - Issuing Bank
- Bank B - Advising Bank

- **SP Beneficiary**

7. At the request of the Applicant, is it permissible for Bank A to issue an LC in favor of an SP Beneficiary?

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8. Based on FAQ question 395, as all 3 stipulated conditions *have not* been fulfilled, it would be permissible for Bank A to issue the LC; it would also be permissible for Bank B Advising Bank to advise the LC. However, if the definition of “carries a term of more than 90 days maturity” applies to the validity period of an LC, and the LC expires 91 days after issuance, then all three conditions would be met, and it appears that both issuance of and advising of the LC would not be permissible under the regulations. Is this correct?

Tenor and Definition of Maturity

9. Many questions arise if the availability/validity period of an LC is treated similarly or different from the financing period. Please clarify condition (2) under Executive Order 13662 below. Does it refer to the availability period - from issuance to expiry - the period during which documents may be presented under the LC, which is a contingent liability until funded? Or, does it refer only to the financing period (in a time LC, deferred payment LC or LC refinancing) following documents presentation and transaction funding, all of which would be considered an asset (loan) on the bank's balance sheet?

“Question 395 under Executive Order 13662

*U.S. persons may not advise or confirm a letter of credit if all of the following three conditions are met: (1) the letter of credit was issued on or after the effective date of the sanctions, (2) **the letter of credit carries a term of longer than 90 days maturity**, and (3) an SSI entity is the applicant of the letter of credit (i.e., the importer or buyer of the underlying goods or services). This would constitute prohibited activity because the subject letter of credit would represent an extension of credit to the SSI entity. [7-28-2014]”*

10. May an Issuing Bank give one LC validity extension to an SP Applicant if less than 90 days maturity on an LC issued prior to July 16?
11. May an Issuing Bank extend the financing period by 30 days to an SP Applicant if the original financing period was 60 days?
12. Are LC re-financings or post-financings treated separately from availability/validity periods for an SP entity? In other words, if an LC is valid for a period of 90 days, is a subsequent 90-day post-financing permissible under the regulation?

Secondary Market Transactions

13. Could an LC Issuing Bank be in violation of sanctions if the LC confirming bank has participated the non-payment risk of the LC Issuing Bank to a third party who is a sanctioned FI?
14. Is the following assessment correct for question 12 above? If none of the LC parties (the Issuing Bank, the Confirming Bank, Applicant or Beneficiary) are sanctioned parties, and the Confirming Bank then sells a participation to a an SP Participant Bank, then the Confirming Bank has taken on the risk of the SP Participant Bank, and the Issuing Bank has no control over this, whether the participation was disclosed or not to the Issuing Bank, and therefore the Issuing Bank has not breached any sanctions. But the Confirming Bank who sold an

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unfunded participation may have an issue paying participation fees back to an SP Participant for a transaction with a tenor greater than 90 days, or if they sold a funded participation and returned principal and interest back to the SP Participant for a transaction of greater than 90 days.

15. Is it permissible to buy existing debt issued by one of the SP entities in the secondary loan market from a third party?
16. Is the following assessment correct? Since buying in the secondary market is not considered providing additional liquidity or financing to a SP, then in theory it would be permissible under the regulation, but in practice may not be advisable.

Bid/Performance Bonds

17. Are guarantees other than loan guarantees (e.g. bid/performance bonds) affected by the sanctions?

Payments

18. Is it necessary to assess each single transaction (transaction services, bank notes trading, etc.) to exclude a connection to a prohibited extension of credit to an SP? If yes, what is the necessary level of scrutiny?
19. Do repurchase transactions and/or securities lending transactions fall within the definition of debt?