

Sanctions in contracts

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The sanctions have transformed the contractual practice of the commodity trade. Trading contracts, financing agreements and charter parties now contain detailed sanctions clauses, which allocate the risk of sanctions between the parties. A typical clause allows a party to suspend or terminate its performance if performance would violate the sanctions applicable to it, excludes liability for such suspension or termination, and requires the other party to represent that it is not a designated person and that the goods are not of sanctioned origin.¹ The English courts, whose law governs most commodity contracts, have decided a series of cases on the interpretation of such clauses and on the question whether sanctions justify the non-performance of contracts under the doctrines of force majeure and frustration.²

Swiss law, where it applies, addresses the effect of sanctions on contracts through the rules on the impossibility of performance and on the illegality of contracts. A contract whose performance is prohibited by Swiss sanctions is, to that extent, impossible or void, with the obligations of the parties adjusted accordingly.³ Where the contract is governed by a foreign law, the Swiss courts may take into account the foreign sanctions as mandatory rules of a third state if the conditions of the Private International Law Act are met. The practitioner who drafts a trading contract for a Zug trader must ensure that its sanctions clause reflects the sanctions regimes to which each party is exposed. The clause must also allocate the risks in a way that the parties can live with when the sanctions change, as they do with every new package.

1 Notes

1. BIMCO, Sanctions Clause for Time Charter Parties 2020 and Sanctions Clause for Voyage Charter Parties 2020, [bimco.org](https://www.bimco.org); Reed Smith, "Managing sanctions risk in 2020 – BIMCO releases fresh

sanctions clauses for time and voyage charter parties", February 2020, reedsmith.com: the parties warrant that neither they nor their contractual counterparties are sanctioned parties; owners may refuse to proceed with employment that would expose them to sanctions, with the vessel remaining on hire; each party may terminate if the other breaches the sanctions warranties. English case law on sanctions and force majeure: MUR Shipping BV v RTI Ltd [2024] UKSC 18, 15 May 2024, jsumundi.com and Cambridge Legal Studies (sanctions-related force majeure). The Reed Smith summary does not address exclusions of liability or warranties on the origin of the goods. ↩

2. Harneys, "RTI Ltd v MUR Shipping BV: sanctions and force majeure clauses", harneys.com: in MUR Shipping BV v RTI Ltd [2024] UKSC 18, judgment of 15 May 2024, the UK Supreme Court held unanimously that, absent express wording, a reasonable endeavours proviso in a force majeure clause does not oblige a party to accept non-contractual performance; MUR could therefore rely on the clause after US sanctions against RTI's parent company impeded payment in US dollars and reject RTI's offer to pay in euros. ↩
3. Art. 119 para. 1 OR and Art. 20 para. 1 OR (SR 220), droit-bilingue.ch: an obligation is extinguished where its performance becomes impossible through circumstances not attributable to the obligor; a contract with impossible or unlawful content is void. Art. 19 IPRG (SR 291), swissrights.ch: a mandatory provision of another law may be taken into account where legitimate and clearly overriding interests of a party so require and the matter is closely connected with that law. ↩

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