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## **Anti-Corruption Drafting**

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# ICC ANTI-CORRUPTION CLAUSE



## Highlights

- Clause to be included in contracts whereby parties commit to complying with ICC Rules on Combating Corruption or commit to put in place and maintain a corporate anti-corruption compliance programme
- Helps preserve trust between parties and prevents corruption in both the negotiation and performance of contracts



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*The world business organization*

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# Foreword

**by Jean-Guy Carrier, ICC Secretary General**

The International Chamber of Commerce has prepared over the years a large number of model contracts and clauses. These documents reflect best international corporate practice in transactional work, facilitate business negotiations and improve the drafting of the numerous contractual documents companies are processing.

At the same time, ICC has been concerned about the devastating effects on business of corruptive practices. It has become clear that corruption constitutes an obstacle to the creation of the level playing field all corporations want to see materialize, and runs counter to international public order.

Therefore, ICC in 1977 issued the ICC Rules on Combating Corruption (the ‘Rules’), thereby becoming the first international organization to issue rules condemning all forms of corruption and urging companies to put into place preventive measures to ban corruption from their transactions.

The voluntary ICC Rules were regularly revised to reflect best corporate practice and to mirror the provisions of key international anti-bribery instruments, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) and the United Nations Convention against Corruption (2003).

To consolidate the progress made by the business world in its corporate practice, the ICC Rules were rewritten in 2011. The 2011 edition of the Rules contains three parts: Part I states the Rules proper, Part II deals with policies that enterprises should enact to support compliance with the Rules, and Part III lists the suggested elements of an effective corporate compliance programme. The 2011 Rules are designed to be applied by enterprises of any size, whether large, medium or small.

The International Chamber of Commerce considers that its mission does not stop at prescribing voluntary anti-corruption norms, but also includes urging companies to incorporate in their agreements, in full or by reference, anti-corruption provisions either in the form of the core ICC anti-corruption standards, listed in Part I of the 2011 Rules or by the adoption of a corporate compliance programme, as recommended by Article 10 of the 2011 Rules.

The present ICC Anti-corruption Clause will help business people and their advisors to make such essential reference, with the aim of creating trust and preventing their contractual relationships from being affected by corruptive practice.

A handwritten signature in black ink, appearing to read 'J. Carrier', with a stylized, flowing script.

**Jean-Guy Carrier**

## Introductory Note on the Application and the General Purpose and Structure of the Clause

This ICC Anti-corruption Clause (the ‘Clause’), is intended to apply to any contract that incorporates it either by reference or in full. While parties to a contract are encouraged to incorporate the Clause into their contract by its full name, it is anticipated that any reference in the contract to the ‘Clause’ or related variations shall, in the absence of evidence to the contrary, be deemed to be a reference to the ICC Anti-corruption Clause.

The general aim of the Clause is to provide parties with a contractual provision that will reassure them about the integrity of their counterparts during the pre-contractual period as well as during the term of the contract and even thereafter.

Three options are possible: either a short text with the technique of incorporation by reference of Part I of the ICC Rules on Combating Corruption 2011 (Option I) or the incorporation of the full text of the same Part I of the ICC Rules on Combating Corruption 2011 in their contract (Option II), or a reference to a corporate compliance programme, as described in Article 10 of the ICC Rules on Combating Corruption (Option III).

Where Options I and II have been chosen, if a party fails materially or on several repeated occasions to comply with the anti-corruption provisions incorporated in the contract, the non-complying party will be given the opportunity to remedy the non-compliance. Such party will also have the opportunity to invoke as a defence that it has put into place adequate anti-corruption preventive measures. In the absence of the non-complying party taking remedial action, or if remedial action is not possible and no defence is effectively invoked, the other party may suspend or terminate the contract, at its discretion.

Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with the Clause.

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