

TRANSACTION DUE DILIGENCE BEST PRACTICES



EXPORT-IMPORT BANK OF THE U.S.

January 10, 2008

CONTENTS

	<u>Page</u>
Introduction.....	1
I. Reasonable Assurance of Repayment.....	2
II. Fraud and Corrupt Practices.....	3
III. Due Diligence Best Practices.....	4

INTRODUCTION

The Export-Import Bank of the United States (“Ex-Im Bank” or the “Bank”) emphasizes due diligence with respect to all participants in its transactions – lenders, exporters, buyers, guarantors, agents and brokers. Ex-Im Bank exists to take financial risks that commercial lenders will not take. At the same time, the Bank must safeguard taxpayer resources. Focus on due diligence leads to sound credit decisions and helps to ensure that the Bank supports legitimate transactions. Sound due diligences practices also enable Ex-Im Bank to evaluate and approve transactions more quickly.

Ex-Im Bank has created these best practices guidelines to help transaction participants:

- identify material due diligence issues;
- submit applications that the Bank can approve more quickly; and
- identify questionable transactions.

The guidelines identify risk factors that should be examined as part of a thorough and effective due diligence process that addresses both credit risk, and the risk of fraud and corrupt practices. The guidelines do not constitute a checklist. Nor do they create any specific legal obligation. Rather, Ex-Im Bank’s partners are encouraged to consider these best practices in conducting due diligence. The guidelines are intended to provide a framework for effective due diligence, which, when undertaken, will improve application quality, decrease Ex-Im Bank’s transaction processing time, and increase likelihood of approval.

REASONABLE ASSURANCE OF REPAYMENT

Under its Charter, Ex-Im Bank will finance an export transaction only if the Bank finds that “reasonable assurance of repayment” exists. This statutory standard for assessing credit risk is intended to balance support for U.S. export-related jobs with adequate protection of taxpayer resources.

Ex-Im Bank’s reasonable assurance of repayment analysis encompasses all aspects of and all participants in a transaction. Any factor that might affect the likelihood of repayment is relevant to the reasonable assurance of repayment determination.

In addition to financial analysis, the type of information that is relevant to reasonable assurance of repayment includes:

- whether parties operate on an arm’s length basis (note: for purposes of this document, an arm’s length relationship is one that is transparent and commercial in nature);
- the applicant’s ability to conduct due diligence and assess risk;
- exporter and supplier experience and ability; and
- commercial or legal concerns with respect to the relevant geographic or market sectors or with the particular parties.

Pursuant to the reasonable assurance of repayment standard and Ex-Im Bank’s general banking authority, Ex-Im Bank has broad discretion with respect to accepting, processing, and assessing loan, guarantee, and insurance applications

FRAUD AND CORRUPT PRACTICES

Many of the factors relevant to credit risk also are relevant to identifying potential fraud and corrupt practices. One of the purposes of these guidelines is to assist Ex-Im Bank's partners in identifying transactions tainted by fraud and corruption.

In an Ex-Im Bank transaction, fraud can include non-shipment of goods, inflated invoices, and falsified financial statements, bills of lading or exporter certifications. Corruption can take many forms, including bribery and money laundering. Bribery is the offering, giving, receiving or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public duties. Money laundering is the criminal practice of filtering illegally acquired funds through a series of transactions, so that the funds are disguised as proceeds from legal activities. Charging prices in excess of market values has often been used as a means of concealing bribery and money laundering.

Fraud and corruption can result in significant monetary loss and undermine Ex-Im Bank's programs. An individual or entity that is willing to commit fraud or otherwise engage in illegal activity to secure a contract is less likely to honor its repayment or performance obligations. For this reason, Ex-Im Bank relies upon transaction participants to provide legitimate information, certifications, financial statements, and export documents and to comply with all applicable laws – both domestic and foreign. Ex-Im Bank also encourages transaction participants to emphasize their commitment to legal compliance to their employees, agents, and contractors.

Ex-Im Bank may decline to process or discontinue processing any application related to a transaction if Ex-Im Bank determines there is evidence of fraud or corruption or any of the participants has engaged in, or been associated with, fraud or corruption in the past. Ex-Im Bank cooperates with law enforcement authorities, foreign and domestic, and will refer to such authorities fraud or corruption allegations that Ex-Im Bank deems credible.

For more information about Ex-Im Bank's fraud and corrupt practices policies, please see Ex-Im Bank's website at www.exim.gov or the Office of Inspector General at www.exim.gov/oig.

DUE DILIGENCE BEST PRACTICES GUIDELINES: KNOW YOUR TRANSACTION

Ex-Im Bank's due diligence guidelines are intended to provide transaction parties with an understanding of Ex-Im Bank's underwriting process. Analysis of the following issues will help Ex-Im Bank's partners identify transaction risks.

The best practices guidelines do not constitute a checklist and do not create any specific legal obligation. Ex-Im Bank believes, nonetheless, that certain basic due diligence should be conducted in every transaction, and has identified ten questions that we consider in reviewing every application.

Ex-Im Bank recognizes that due diligence generally should be risk-based, with the level of analysis scaled to the nature, complexity, and perceived risk level. Accordingly, the guidelines identify questions that may arise with respect to specific transaction participants. The relevance of these questions will vary from case-to-case. It is important to emphasize that the guidelines do not attempt to address every possible risk issue that could arise in connection with an export finance transaction. The specific measures taken should be based on an assessment of the particular risk elements of the transaction and the parties involved.

Ex-Im Bank hopes that publication of these guidelines – and greater clarity and transparency with respect to Ex-Im Bank due diligence concerns – will lead to higher quality applications that Ex-Im Bank can process more quickly.

It is important to note that transaction parties must comply with their legal and regulatory obligations irrespective of the fact that Ex-Im Bank, a U.S. Government agency, is involved in a transaction. For example, if a lender is required by law or regulation to determine whether a transaction party appears on a U.S. Government prohibited parties list, the lender must make that determination irrespective of Ex-Im Bank's participation in the transaction.

Finally, it is worth noting that there are many well-qualified and reputable firms that utilize both databases and human resources to conduct due diligence. While Ex-Im Bank is not identifying any particular firm for purposes of this document and use of such a firm is not a requirement for or a condition of Ex-Im Bank financing, credible third party due diligence may be helpful in specific transactions.

**DUE DILIGENCE BASICS:
TEN QUESTIONS EX-IM BANK CONSIDERS
ON EVERY APPLICATION**

1. How was the export transaction generated?
2. How did the lender find its customer?
3. Is the obligor's financial information credible?
4. Do transaction parties operate at arm's length, and, if not, what has been done to mitigate potential conflicts?
5. Can the exporter perform under its contract?
6. Does the volume of business associated with a particular exporter, intermediary, buyer or other party seem appropriate, given the size of the company?
7. Does the buyer appear to have a demonstrated need for the export?
8. Is the price of the goods or services reasonable?
9. Does compensation seem reasonable and appropriate given the scope of work performed by a transaction party?
10. Does any transaction participant or principal appear on a U.S. Government prohibited parties list (for example, Office of Foreign Assets Control or Excluded Parties List System)?

PARTICIPANT INQUIRIES THAT VARY BASED ON TRANSACTION CIRCUMSTANCES

Lender and Exporter Agents

Agents can be a valuable source of business for lenders and exporters and can play an important role in generating export transactions. At the same time, because of the pivotal role that these agents play, lenders and exporters should be able to demonstrate that they have conducted adequate due diligence with respect to their agents.

Does the lender or exporter have an established relationship with the agent?

Has the lender or exporter met the agent in person?

Has the lender or exporter conducted a background check on the agent?

Does the agent use sub-agents?

What has the lender or exporter done to ensure that the agent complies with the law (including the Foreign Corrupt Practices Act)?

Does the lender or exporter require its agent to adhere to a code of conduct?

What services does the agent provide?

How is the agent compensated, and is the compensation reasonable and appropriate?

For exporter agents in particular, is the agent's commission consistent with those customarily paid in the relevant industry and commissions paid to the exporter's other agents?

Does the agent act on behalf of any other party to the transaction?

To the extent that there exists a potential conflict for the agent (e.g., the agent finds prospective borrowers, prepares their financial information for submission to Ex-Im Bank, and the lender pays the agent a success fee), what has the lender or exporter done to mitigate the potential conflict?

Is the agent closely associated with foreign officials?

Has the agent ever been charged with or convicted of bribery or a bribery-related offense?

Other Third Party Intermediaries, Including Equipment Aggregators

Third party intermediaries, such as equipment aggregators, often play a valuable role in arranging export transactions or associated financing. Nonetheless, because their role often is relatively undefined, due diligence with respect to intermediaries is critical.

- What is the intermediary's role in the transaction?
- Is the intermediary or its agents or affiliates involved in preparing the obligor's financial statements?
- How is the intermediary being compensated?
- Does the amount of compensation seem consistent with the intermediary's role?
- Has a background check been conducted on the intermediary and its principals?
- Has the intermediary conducted background checks or other due diligence regarding entities and individuals with which the intermediary is affiliated?
- Is the intermediary using agents or sub-agents?
- How much business has the intermediary generated?
- What type of goods is involved in the transaction and are they new or used?
- What is the nature of the intermediary's relationship with suppliers?
- Does the intermediary have a close relationship with a foreign government official?

Exporter

Ex-Im Bank exists to support U.S. exporters, thereby creating and maintaining U.S. jobs. Business practices, experience and resources, however, vary widely among exporters. While Ex-Im Bank looks to the borrower for repayment, due diligence with respect to the exporter is critical to assessing transaction legitimacy and the likelihood of repayment.

- How did the exporter generate the sale?
- How long has the exporter been in business?
- How long have the exporter's principals been engaged in the line of business for which they are seeking Ex-Im Bank support?
- Was the exporter incorporated as a subsidiary of a foreign company for the primary purpose of facilitating Ex-Im Bank financed transactions?
- What is the exporter's reputation in the marketplace?
- What is the nature of the exporter's operational and technical expertise relative to the export product?
- Does the exporter have an existing relationship with the buyer?
- Does the export contract seem consistent with the exporter's sales history and production capability?
- What is the exporter charging the buyer relative to list price?
- Does the exporter maintain a policy regarding use of agents and/or commission

payments?

Are the exporter's principals operating through more than one company on the subject transaction?

Obligor/Buyer

Due diligence with respect to the obligor is critical because Ex-Im Bank relies on this party to repay the debt. The obligor may or may not be the same party as the buyer. Whether or not the buyer represents the source of repayment, due diligence with respect to the buyer is critical as well.

Is there any reason to doubt the obligor's character?

How long has the obligor been in business?

Is the purchase of goods related to the obligor's primary line of business or a new line of business?

Has the applicant visited the buyer and obligor?

Who are the obligor's shareholders? Does a government official have any ownership interest?

Is there any common ownership between the obligor and any other party to the transaction?

Has a background check been conducted on the obligor?

Is the obligor overseen by a government regulatory authority?

Have the obligor, its shareholders or its senior managers been convicted of a crime in any court of law or other tribunal?

Please note that in project finance transactions, in addition to the aforementioned due diligence, which would encompass project sponsors, additional due diligence and verification may be required with respect to specific participants.

CONCLUSION

We hope that you will find these guidelines helpful. If you have questions, please do not hesitate to contact us. Ex-Im Bank is confident that, working together with its partners in the exporting community, we can employ industry best practices with respect to transaction due diligence, thereby both maximizing support for U.S. exports and protecting taxpayer resources.