International Finance, Spring 2024
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Sovereign Debt and Collective Action Clauses: Materials for Class on Wednesday April 10

In this class session we will look at ICMA's work on collective action clauses and, more recently, on clauses to provide for suspension of payment obligations in the event of a severe climate shock or natural disaster.

ICMA is a trade association structured as a Swiss verein, a non-profit organization, with over 600 members active in international debt capital markets. Its mission is "to promote resilient and well-functioning international and globally integrated cross-border debt securities markets, which are essential to fund sustainable economic growth and development."[2] Like other financial market trade associations it develops documentation like the clauses we are looking at, and also comments on regulatory proposals. Its work on documentation involves acting as a rule entrepreneur, publishing information for market participants on market developments, and running training courses.

The ICMA CACs are designed to be included in financing agreements. They refer, fopr example, to forms of loan agreement developed by the LMA (Loan Market Association), which focuses on the syndicated loan market in Europe, te Middle East and Africa, and LSTA (Loan Syndications and Trading Association) which focuses on the US loan market.

Collective Action Clauses are provisions included in the documentation for bond issues that provide for majority (supermajority) investor/creditor approval of a restructuring. Without this sort of contractual provision all of the investor/creditors would need to consent to the restructuring, because this is the normal rule for contract novations. And, because of this, CACs are forward-looking, so sovereign debtors may have some debt which includes them and older debt which does not. Or there may be different debt containing different CACs.

The ICMA documents show a lot of collaborative work on this issue from public and private sector entities, including government agencies, the IMF, trade groups, rating agencies, and law firms, illustrating the complexity of developing a standard form in the financial markets. Notice also, that the ICMA documents reveal some differences between the two standard form loan agreements (LMA and LSTA) although the loan documents are basically trying to achieve the same objective. In the sovereign loans context there is some variation in drafting, and it is expected that these CACs will be used as a guide.

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[2] ICMA Quarterly Report, First Quarter 2024 (Jan. 10, 2024) at p. 2.