

EU sanctions prohibiting insurance and reinsurance – recent developments and practical steps.



Economic sanctions imposed by the EU, the UN or by individual countries are a significant feature of international business.

Further measures, intended to combat financial crime and also the financing of terrorism, are closely associated with the sanctions regime. The insurance sector is increasingly subject to the effect of these measures, which often prohibit certain types of activity or transactions involving specified individuals or companies.

Sanctions imposed by the USA, relevant where a payment is wired via the USA or a financial institution subject to USA jurisdiction, are often even wider in scope, adding a further level of prohibition. Moreover, many banks have become cautious in their own right about transactions involving countries perceived to be high risk.

Over 30 countries are now subject to EU sanctions. Sanctions can relate specifically to the provision of insurance and reinsurance as, for example, in the cases of Iran and Syria.

In the UK, sanctions are now being more rigorously enforced. The Office of Financial Sanctions Implementation was established in 2016. Banks and professional advisers are now obliged to monitor transactions and report suspected breaches of sanctions. In recent years, insurance companies, brokers and banks have been prosecuted, or penalised by the regulator, for breaches in relation to international transactions. Post Brexit, the UK government has expressed its intention to continue complying with the EU sanctions regime.

Unfortunately, the terms in which sanctions and other measures are expressed can be imprecise and subject to change at short notice. The position in relation to insurance and reinsurance of Iranian and Russian risks illustrates this, as follows.

Sanctions on Iran

Sanctions have been imposed on Iran since the 1970s, including prohibitions on the provision of financial assistance for certain trade activities. By EU Council Regulation 961 of 2010, the provision of insurance and reinsurance to the government of Iran, entities incorporated in Iran or subject to Iranian jurisdiction, or to those acting on their behalf, was prohibited.

This was not an easy rule to apply in the case of commercial risks, which could provide cover for numerous parties and interests. An insurer would not be in breach of sanctions merely because one of the parties insured was Iranian. For the sanction to bite, the party seeking the cover would have had to be acting on behalf of the Iranian insured, when placing the insurance.

The approach adopted in practice with EU reinsurers was to disclose at the time of placement the name of any Iranian party that would be insured by the underlying original insurance. This gave the reinsurer the opportunity to check whether the Iranian party was connected to the Iranian government, or specifically listed as a target of the sanction. If the reinsurer was willing to accept the risk then, provided cover was not obtained on behalf of the Iranian party, the expectation was that the reinsurer would not be prevented from releasing funds on the grounds of sanctions, if a claim subsequently arose.

In a Joint Comprehensive Plan of Action (the JCPOA) in 2015 it was agreed that the EU prohibition referred to above would be terminated, on condition that Iran took certain action in relation to its nuclear weapons.

Bringing matters up to date, the USA is concerned over the conduct of Iran and threatening not to renew its waiver of sanctions as agreed in the JCPOA, when this comes up for renewal next month. If the USA does take this action, it will be for the EU and Iran to agree whether to continue the JCPOA in some form between themselves. If not, a prohibition along the same lines could be reimposed.

Sanctions on Russia

By EU Council Regulations 833 and 960 of 2014, insuring or reinsuring the importing of goods originating in Crimea or Sevastopol is prohibited. Insuring or reinsuring the supply of military goods, or 'dual use' goods, to Russia is similarly prohibited.

There is a prohibition on providing products or services for Russian deep water, arctic or shale oil exploration or production. There is a system of licensing for supplying oil industry-related products or financial assistance therefor, but in this context the term 'financial assistance' is not understood to extend to the provision of insurance or reinsurance.

However, the USA and the UK have recently imposed additional sanctions on specified individuals and companies associated with the regime and further extensions of sanctions against Russia are under consideration.

Practical steps

The consequences of a breach of sanctions can be extremely serious. Keeping up with the minutiae of sanctions and sanctions lists is a daunting proposition and will require resources to do so.

Caution is required, as the courts can be expected to implement government policy by adopting a broad reading of sanctions regulations.

Carrying out due diligence (and being able to demonstrate that it has been carried out) is essential and likely to involve obtaining information and warranties to ensure that insureds are not engaged in prohibited activities or dealing with listed individuals. Due diligence is required both at the underwriting stage and claims stage, to ensure that the recipient of claims funds is not subject to sanctions and that the payment is not otherwise in breach.

Consideration should also be given to whether a claim which insurers were contractually liable to pay but which could not be paid because of sanctions, can now be paid in light of a change in the sanctions regime.

Insurers and brokers should also discuss proposed payments with their banks in advance, to allow the bank to make its own enquiries and either satisfy itself that the payment can be made or have further questions answered.



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