

IMPACT OF SANCTIONS ON INSURANCE AND REINSURANCE

PIU CONFERENCE
WARSAW – 16 JUNE 2015

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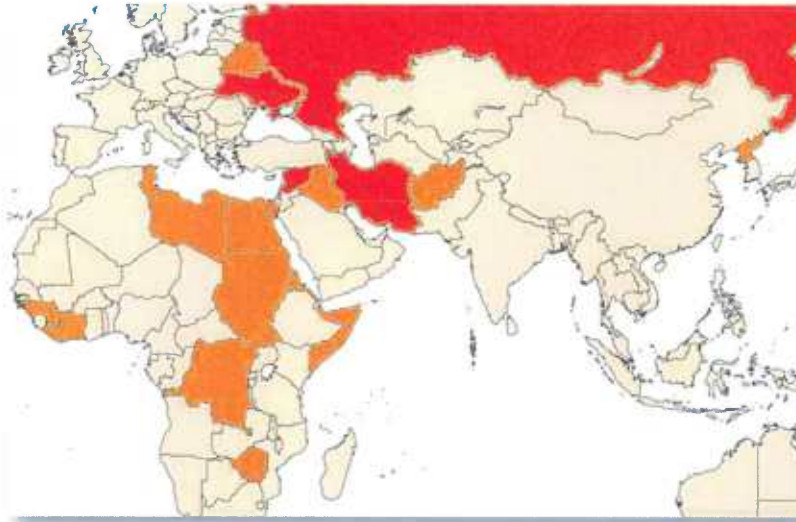
Agenda



- Ensuring (re)insurers do not deal with a prohibited person
- Ensuring (re)insurers do not insure prohibited goods
- Dealing with claims
- Sanctions clauses in contracts of insurance
- Enforcement trends in the US and elsewhere
- What's next – Iran, Russia, Cuba

Where are there EU sanctions?

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Issue 1: Prohibited persons

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- "No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the listed persons, entities and bodies"
- "The measures ... shall not give rise to liability of any kind on the part of the natural or legal persons, entities or bodies concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions."
- Iran (Nuclear Proliferation): 94 individuals and 477 entities
- Syria: 213 individuals and 71 entities
- Ukraine (Misappropriation): 17 individuals and 0 entities
- Ukraine (Sovereignty): 150 individuals and 37 entities

Issue 1: Prohibited persons (cont)



- "It shall be prohibited to provide insurance or re-insurance, or to broker the provision of insurance or reinsurance, to:
 - (a) Iran or its Government, and its public bodies, corporations and agencies;
 - (b) an Iranian person, entity or body other than a natural person; or
 - (c) a natural person or a legal person, entity or body when acting on behalf or at the direction of a legal person, entity or body referred to in (a) or (b)."
- US extra-territorial sanctions under IFCA:
 - "... underwriting services or insurance or reinsurance to or for any Iranian person included on the list of specially designated nationals..."

Case study 1



- You have been asked to provide property insurance to the Hartwell Arena in Helsinki, which is due to host concerts by Miley Cyrus and Justin Timberlake.
- Do any sanctions issues arise?

- You learn that the Hartwell Arena is owned by Arena Events OY and that Arena Events OY is 50% owned by Gennady Timchenko
- Gennady Timchenko is on the US SDN list but not the EU sanctions list
- Do any sanctions issues arise?

Issue 2: Prohibited goods



- Is the insurance itself prohibited?
 - Insurance and reinsurance related to the purchase, transport or import into the EU of crude oil* or petroleum products or petrochemical products* or natural gas which originate in Iran or have been exported from Iran

 - US extra-territorial restrictions under IFCA: "... underwriting services or insurance or reinsurance
 - for any activity with respect to Iran for which sanctions have been imposed ...
 - to or for any person for the sale (etc) to or from Iran of graphite, raw or semi-finished metals such as aluminium and steel, coal ...

- Is the assured carrying prohibited goods?
 - Contrast EU and US approach

Case study 2



- You are asked whether you can provide cover in respect of a consignment of fire detection scanners which are or have been shipped from Luxembourg to Russia.
- Do any sanctions issues arise?

- You then learn that the consignee is Gazpromneft and the shipper is a US company.
- Do any sanctions issues arise?

Issue 3: Dealing with claims



- Can you instruct experts and lawyers?
- Can you provide security?
- Can you make a payment into court?
- Can you settle the claim?
- Can you pursue subrogated claims?

Case study 3



- You insure a vessel which is carrying grain to Iran. You have checked the Iranian receiver, port operator, etc.
- The ship collides with another vessel, which was loading oil at the oil terminal and damaged the ship and the terminal.
- The owners of the tanker are threatening to arrest your assured's ship as security for their claims.
- The port inspector has come on board and says the cargo needs to be re-fumigated because the ship's hatch covers are not properly sealed. The cargo receiver is refusing to take delivery.
- There is a representative of a local bank at the port, claiming the bank is entitled to the cargo.
- The owners want to know if they can buy bunkers because the ship is running low on fuel.

Sanctions clauses



LMA 3100

- *No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanctions, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.*

Enforcement trends



- May 2011 - PDVSA
- May 2011 - Associated Shipbroking (Monaco)
- June 2012 - ING
- December 2012 - Bank of Tokyo-Mitsubishi
- December 2012 - Standard Chartered
- May 2013 - American P&I Club
- December 2013 - Royal Bank of Scotland
- June 2014 - BNP Paribas
- March 2015 - Commerzbank
- March 2015 - Paypal
- May 2015 - BNP Paribas

The end of sanctions on Iran?



- Current suspension expires on 30 June 2015
- A Joint Comprehensive Plan of Action (JCPOA) to be agreed
- To be approved by US Congress
- Iran to fulfil its key nuclear requirements
- Verification by the International Atomic Energy Agency
- Sanctions to be suspended but "snap-back"
- Restrictions on enrichment by Iran for 10y and 15y

The end of sanctions on Cuba?



- Lifting of certain US restrictions (17 December 2014)
 - US persons now permitted to travel to Cuba without a licence (provided travel falls within one of 12 categories)
 - Partial relaxation of 180 day rule
 - Licences for passenger ferry operators
- Removal of designation as state sponsor of terrorism (29 May 2015)
- Impact on wider embargo

Recommendations



- Exercise due diligence
- Have policies and procedure in place
- Check the assured, any co-assureds, any insurer, etc
- Be aware of US extra-territorial sanctions under IFCA
- Document the checks which you conduct
- Have appropriate sanctions wording in the policy
- Talk to the regulators


Further reading...



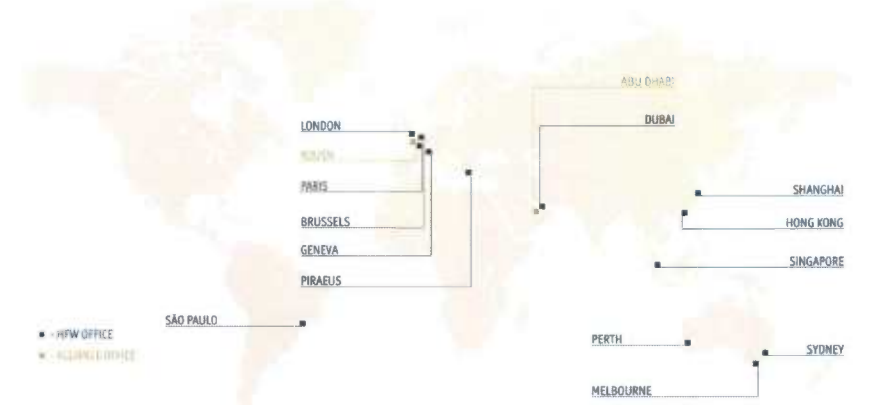
- HFW sanctions articles:
 - Dealing with the changing sanctions landscape, February 2015
 - <http://www.hfw.com/Dealing-with-the-changing-sanctions-landscape-February-2015>
 - Iran: no immediate lifting of sanctions; but negotiations under way, April 2015
 - <http://www.hfw.com/Iran-no-immediate-lifting-of-sanctions-April-2015>
- HFW Insurance & International Trade Bulletin:
 - April 2015 issue (sanctions article on p.11)
 - <http://www.hfw.com/Insurance-and-international-trade-Bulletin-April-2015>

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