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Insurance sector needs to take care over sanctions

GUY SOUSSAN and DAVID LORELLO look at the implications of sanctions for insurers



THE US and the European Union (EU) impose economic and financial sanctions against countries, entities and persons in support of foreign policy objectives. These sanctions prohibit financial transactions and business dealings that directly or indirectly involve sanctioned countries or parties, absent a government authorisation, which is typically difficult to obtain if requested.

Global insurers and reinsurers must be mindful of US and EU economic sanctions, since substantial penalties can be imposed for a violation. The risks for the insurance and reinsurance industry are significant and thus compliance strategies should be in place.

US economic sanctions

US economic sanctions are administered by the US Department of Treasury's Office of Foreign Assets Control (OFAC). These sanctions apply to any US person or US company (including its branch offices located abroad) and foreign persons located in the US.

Non-US subsidiaries of US companies can also be restricted, as OFAC prohibits US persons from "facilitating" or "approving" business by a non-US corporate affiliate or third party, even if the non-US company is not itself prohibited from doing business with a sanctioned country or party.

OFAC enforces comprehensive economic sanctions programmes against certain countries (eg, Cuba, Iran and Sudan) and against certain entities and persons (known as Specially Designated Nationals (SDNs)) that are identified in a list published by OFAC.

SDNs can be agents of sanctioned governments, terrorists, narcotics traffickers, weapons proliferators and other persons or entities engaged in conduct at odds with US government interests. Such designated entities and persons are located throughout the world and include thousands of entities.

US regulations prohibit any type of business dealing, financial transaction or service to these

countries and designated entities or persons, including insurance or reinsurance services.

In most instances, if US persons (including an insurer or reinsurer) were to identify an SDN as an owner, holder or beneficiary of a policy, it would need to "block" any payments (premiums or claims payments) and report the existence of the policy coverage to OFAC within 10 days of discovering it.

EU economic sanctions

In the EU, sanctions measures are imposed by means of Council Regulations, which are directly applicable in all the member states. They must be applied by all persons and entities doing business in the EU, including nationals of non-EU countries acting in the EU and EU nationals and entities incorporated under the laws of a member state.

In most cases, EU economic sanctions are country-specific and extend to, among others, specified parties in Burma (Myanmar), Sudan, Iran, North Korea and Zimbabwe. The regulations prohibit transactions or dealings with lists of persons, groups and entities as identified by the EU. The European Commission maintains a consolidated list of thousands of persons, groups and entities that are subject to restrictions.

EU economic sanctions prohibit transfer of capital and payments and also require the freezing of funds and economic resources of targeted persons and entities. It is illegal to make funds or economic resources available directly or indirectly to or for the benefit of listed persons or entities - wherever such persons or entities are located.

The term "economic resources" is viewed quite broadly and is likely to include any type of financial benefit (including possibly insurance or reinsurance coverage).

Sanctions violations

Violations of US sanctions, including attempts and conspiracies to commit violations, are subject to civil penalties of up to a maximum of \$250,000 per violation or twice the amount of the transaction, whichever is greater.

Criminal penalties, including imprisonment, also can be imposed. In the EU, criminal sanctions in the form of monetary penalties and imprisonment are also applicable as determined by each member state.

Application to insurers

OFAC has stated in public guidance that restricted "services" include providing or brokering insurance or reinsurance policies to countries, entities, or persons subject to US sanctions.

The restrictions on "services" are very broad and could cover processing premiums or claims (including standard insurance and facultative or treaty-based reinsurance coverage).

Moreover, an insurance policy is considered "property" under OFAC's regulations, such that an SDN who is an owner, policyholder and/or a beneficiary would require the insurer/reinsurer to "freeze" the policy, refuse any further financial transactions and report the "blocked property" to OFAC. Certain nationals (such as Cuban nationals), even if not listed as an SDN, could trigger the same freezing and reporting obligations.

The EU sanctions regime does not clearly impose a prohibition (such as the US) on the provision of insurance or reinsurance services to sanctioned countries or persons. For instance, EU sanctions applicable to Iran only expressly restrict or require a licence for extending export credit coverage to the sale of certain goods and technology that could contribute to nuclear proliferation.

However, under EU sanctions regimes and multilateral sanctions promulgated by the United Nations, the provision of insurance services to listed Iranian individuals and entities could be indirectly restricted as a general consequence of the financial sanctions. The obligation to freeze all funds and economic resources arguably make it illegal for any EU insurer or broker to accept premiums or to settle claims with such Iranian persons or entities.

Non-governmental organisations, as well as officials of the US Treasury Department, have urged that the EU economic sanctions should explicitly preclude insurance services and related transactions from being provided to specific country regimes, such as Myanmar (Burma) and Iran.

Similar to EU provisions that aim to combat money laundering and foreign bribery and which are equally applicable to the insurance industry, the EU is likely to come under substantial international pressure to prohibit insurance-related transactions with "rogue" or criminal country regimes, entities and persons.

Notably, US and EU sanctions risk issues could arise even where the broker or insurer's direct customer is not a restricted party or is not based in a restricted country. Under group insurance policies, for instance, the customer (eg, a group employer) may not be restricted but a beneficiary under the policy may be designated as subject to eco-



omic sanctions.

Similarly, the ultimate scope of coverage under international programmes, syndicate or pooling arrangements and treaty-based reinsurance agreements may inadvertently include restricted countries or entities. This inclusion may not be immediately apparent.

However, if an insurer, reinsurer or broker learns about such restricted policies, then the claim cannot be paid and that person's coverage must be blocked by all persons subject to OFAC's rules. The EU soon may move to impose similar prohibitions explicitly, even though arguably they may apply as currently construed.

Conclusion

Insurers and brokers involved in the coverage of international risks should examine US and EU economic sanctions laws and regulations carefully and seek guidance as appropriate.

Brokers and insurers should exercise due diligence and reasonable care with regard to global policies. They should engage in "SDN and EU lists screening" to ensure that those parties or customers with whom they deal are not themselves restricted under these sanctions.

To minimise sanctions liability, insurers and reinsurers could decide to insert policy exclusion clauses into their contracts or treaties at the outset that void coverage of restricted parties in violation of US and EU sanctions regimes. The risks for the insurance industry are significant, but effective compliance strategies are available and, with appropriate diligence and safeguards, those risks can be managed.

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