



ACI's 5th Annual Economic Sanctions Boot Camp

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*Managing Sanctions Risks in
Insurance/Reinsurance and
Asset-Backed Transactions*

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Increased Emphasis on Insurance and Reinsurance



- **Specifically targeted by EU Sanctions**
 - Iran & Syria and certain Russia sanctions
 - Excluded from EU Sectoral Sanctions
- **U.S. Secondary Sanctions on Iran**
 - IFCA Section 1246
 - Iran Sanctions Act provisions
- **NY Dept. of Financial Services Inquiries**

Beyond SDNs: Hidden (Re)insurance risks



- **Screening essential, but not sufficient**
 - Non-Listed companies (e.g., Iranian-owned) abroad
 - 50%-owned subsidiaries of listed companies
 - Goods in international commerce (e.g., Iranian gas/oil; Cuban nickel)
 - Non-U.S. insureds engaged in commerce in sanctioned countries

- **Inapplicability of OFAC General Licenses to fully foreign transactions**

Sanctions Exclusions



- **OFAC advises “explicit exclusion” for global policies**
 - “[W]henever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions, such coverage shall be null and void”
 - ‘*Suspension*’ of cover and use of escrow accounts likely inadequate
- **Growing acceptance of exclusions after EU sanctions**
 - ***LMA 3100 (Lloyds market)***. 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 or such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, United Kingdom or United States of America.
 - **Underwriting and claims enforcement processes essential**
- **Other coverage: assess risk of sanctions exposure and need for exclusion under a “should have known” standard**

(Re)insurance Compliance Mechanisms



- **Underwriting and claims due diligence for sanctions compliance essential**
 - Ownership diligence may critical for high-risk countries (Russia, Burma, Belarus & Zimbabwe)
 - Unique challenges for quota share reinsurance
 - Notice of excluded risks (rejection of premium) and coverage
- **Sanctions exposure when there is no exclusion?**
 - Commercial relationships impacted; licensing may not be available
 - HCC Insurance penalized for participating in aviation hull policy covering commercial airline with operations in Iran
 - General Re penalized for payment of facultative XOL claims arising from London-based insurer's coverage of Iranian vessel operations
- **Brokers also at risk**
 - Aon Energy (facultative retrocession reinsurance with EU companies of Iran construction risk)
 - McGriff, Seibels & Williams (multiple peril policies covered oil rig in Iranian waters)

Asset-backed transactions



■ **Examples of transactions**

- Purchasing, repackaging, or rating debt securities
- Arranging structured finance transactions

■ **Primary concerns**

- Do the assets originate from commerce involving sanctioned countries?
- Do sanctioned persons have an interest in the assets or in the securitization of those assets?

■ **Islamic finance transactions:** Involve assets even when not traditionally asset-backed

Compliance Mechanisms



- **Screening:** may be of limited utility for assets
- **Warranties and representations:** may be effective to identify sanctions concerns with reputable entities
- **Due diligence:**
 - Supplied data/open source information
 - Derogatory information databases
 - Targeted inquiries (e.g., nature of assets; transaction parties)
 - Outsourced due diligence
- **Training**

Outsourcing Diligence



- **Volume of business and risk level**
 - Country/industry
 - Regulatory oversight/expectations
 - Practical limitations
 - Expectation of knowledge (e.g., isolated contract vs correspondent banking relationship)
- **Availability and quality of internal resources**
- **In country resources, if warranted**

Outsource to?



■ Consulting firm

- High risk engagements
- Local resources often available
- Books and records and local records experience

■ Law firm

- Expertise/resources to provide swift assessment of sanctions status
- Privileged communications (some jurisdictions)
- Guidance on outsourcing: may hire and direct consulting firm

■ Local Affiliate

- Must assess trustworthiness and cultural issues
- Quality of resources/processes
- Knowledge of sanctions/corruption risks
- MOU or agreement prudent

■ Counterparty

- Lack of control, visibility, and accountability
- MOU, representation, or agreement essential



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