

The consequences of the Russia related sanctions

Considerations for the marine insurance industry

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Legislation

Russia (Sanctions) (EU Exit) Regulations 2019
EU Regulations 833/2014 and 269/2014

Financial Sanctions

- Targeted asset freezes against designated persons (DPs)
- Administered by OFSI (HM Treasury) in UK and competent authorities in EU member states

Trade Sanctions

- Prevents underlying trade in prohibited goods
- Restricts **import, acquisition and supply / delivery** and **export, supply / delivery and making available**
- prohibitions on (re) insurance in relation to above
- ECJU (DBT) in UK

Financial Sanctions

- The mechanics of financial sanctions
 - Obligation to freeze funds and economic resources and not make them available (directly or indirectly) to DPs
 - **Funds** and **economic resources** include not just physical assets and as cash but also securities, credits, rights of set off, letters of credit, bills of lading, and any intangible right that can be used to obtain other assets
 - Asset freeze obligation extends to entities owned or controlled more than 50% by the DP – including *de facto* control
 - Can cause difficulty with oligarch owned conglomerates
 - Aggregation of ownership in EU / no aggregation in UK

Financial Sanctions

- What constitutes ownership / control – OFSI guidance August 2023
 - Percentage of shares / voting power
 - Indications of continued influence by DP e.g. through personal / family connections
 - Board level control or enhanced voting rights, shareholder agreements, put / call options
 - Control by trusts associated with a DP, or financial liabilities to a DP
 - Divestment: consider how shares were transferred, whether at true value, relationship of person benefitting from divestment, how funding for divestment was carried out
 - Similar considerations within EU on de facto control

Financial Sanctions

- Penalties for breach
 - criminal and civil monetary penalties for breach in UK
 - Up to 7 years in prison
 - Strict liability for civil monetary penalties to be proven on balance of probabilities
 - Statutory maximum penalty is >£1m or 50% of value of breach, with discounts of 30% or 50% available for self reporting
 - National laws of EU member states
- Risk mitigation
 - CDD and KYC / screening
 - At inception and at the time of the payment of a claim
 - Sanctions clauses (LMA 3100)
 - Licences – both general and specific

Trade Sanctions

Must not directly or indirectly provide **financial services**, including (re)insurance, or **funds** in pursuance of or in connection with an arrangement whose object or effect is

Export related prohibitions

export, direct or indirect **supply or delivery** of, or direct or indirect **making available** of the prohibited goods to Russia or for use in Russia

Import related prohibitions

Import or **direct or indirect acquisition** of prohibited goods which originate in Russia, or the **direct or indirect supply or delivery** of prohibited goods from a place in Russia to a third country

Prohibitions could affect provision of H&M, P&I, cargo cover

Trade Sanctions

Export related prohibitions

- Critical industry goods
- Aviation / space goods
- Luxury goods
- Dual use / military goods
- Oil refining goods
- Jet fuel / additives
- G7 Dependency goods
- Russia's vulnerable goods

Import related prohibitions

- Iron and steel products
- Revenue generating goods
- Oil and oil products
- Coal and coal products
- LNG

Goods are largely identified by reference to CN codes

Trade Sanctions

- Maritime services prohibition
 - “**supply or delivery by ship**” of crude oil and oil products from Russia to a third country, as well as related **financial assistance**
 - Cannot provide H&M, P&I, cargo cover for delivery of Russian oil by ship to anywhere in the world
 - However, is subject to the “price cap exemption”
 - Exemption where crude is below \$60 per barrel / products below \$100 per barrel
 - System of attestations down the contractual chain on price
 - “Tier 1” actors with access to price information (i.e. buyers / sellers of cargo) provide attestations which flow down chain
- Practically identical prohibitions in EU and US law

Trade Sanctions

- Payment of claims post prohibition
 - Claims arising prior to trade sanction in question (e.g. purchase of steel products prior to UK restrictions)
 - Payment of claim falls to be made after restrictions come into force
 - ECJU approach suggests that this would be provision of funds in connection with prohibited act – licence would be required
 - Contrast position with *Celestial v Unicredit* judgment – letter of credit dispute

FCA assessment of sanctions systems and controls in regulated firms (Sep '23)



- FCA analysis of 90 firms identified both good practice and areas for improvement
 - Governance and oversight
 - Insufficient information provided to senior management about exposure to sanctions
 - Over reliance on global sanctions policies that are not aligned to UK regime
 - Skills and resources
 - Sanctions teams need proper resourcing
 - Screening capabilities
 - Adequate calibration required - over reliance on third party providers / not calibrated to UK risks / missing names that should be caught / generating false positives
 - CDD / KYC
 - Instances of low quality CDD and KYC assessments and backlogs – failures to identify sanctioned individuals or corporate structures
 - Reporting breaches to FCA
 - Expectation of timely and accurate reporting – inconsistent approaches found



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Take aways - what does this mean for me?



- Recognise the increased due diligence requirements due to vastly increased Russian sanctions
 - Focus on CDD / KYC at inception of risk and payment of claim
 - Regulators focussing on lax CDD / KYC and screening
 - Calibrate sanctions screening appropriately
 - Screening of products / goods at inception
 - Identifying prohibited goods – matching classifications of goods to regulations
 - Consider extra-territorial consequences of UK / EU / US sanctions
 - Ensure sanctions policies are calibrated to appropriate sanctions regimes
 - Refresh policies / update sanctions risk assessments



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Thank You

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