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Update

The state of play in key sanctions regimes

Unquestionably, 2014 was a busy year for (re)insurers responding to developments in sanctions. The greater use of sectoral sanctions created challenges for (re)insurers, as did the pace and significance of some of the changes made to established sanctions regimes.

In this article, we look at the current state of play in the following key sanctions regimes and what this means for (re)insurers:

- Russia
- Crimea
- Cuba
- North Korea
- Iran
- Syria

1. Russia: Movement to sectoral sanctions

In response to the destabilisation in Crimea and Ukraine, the EU and US introduced *"sectoral sanctions"* on the following sectors of the Russian economy:

- Defence
- Finance
- Energy

These sectoral sanctions are designed to focus on key business interests in Russia and to complement traditional asset freezing measures imposed on military and political figures in the region as well as those close to President Putin.

Defence

EU sanctions prohibit (re)insurance in connection with the supply of items on the Common Military List, and export credit insurance for *"dual use"* military goods. By contrast, US sanctions only prohibit "US Persons" (meaning, primarily, US citizens and US incorporated companies) from engaging in transactions involving the long-term debt of persons (including entities) in the Russian defence sector.

Finance

EU and US sanctions in this sector are designed to restrict the ability of certain Russian banks to raise long-term finance on the international capital markets. In September, the EU and US acted in concert to reduce the maturity of targeted financial instruments from more than 90 days to more than 30 days.

Energy

Both regimes introduced bans on the supply of specialist equipment and technology for use in **Arctic, deep water and shale oil projects in Russia**. The EU has restricted the provision of certain "*associated services*", such as drilling, well-testing and the supply of specialist floating vessels for use in such projects.

There was uncertainty across the EU about how to interpret some of the measures. For instance, *"deep water"* and *"Arctic"* were not defined by the EU. Guidance from the UK's Department for Business, Innovation and Skills (BIS) indicated that the UK would follow some of the US definitions. This left room for differing interpretations, and applications, of the sanctions in the various EU member states.

In December, the EU fine-tuned key definitions:

- *"Arctic"* has been replaced with *"the offshore area north of the Arctic Circle"*
- *"Deep water"* has been revised to *"water deeper than 150 metres"*
- *"Shale oil projects"* has been amended to *"projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing"*

Over the course of 2014, sanctions were gradually tightened on Russia. The introduction of sectoral sanctions was a significant step change by both the EU and US. Sectoral sanctions represent a novel, calibrated approach to achieving foreign policy objectives in contrast to blanket embargoes and pinpointed designations. The Ukraine-related sanctions on Russia appear to be under continuing review pending developments on the ground. However, the latest indications are that they will not be relaxed until matters stabilise in Ukraine.

2. Crimea: In tune with Russia sanctions

The EU's first response to the situation in Crimea was to impose a ban on EU persons importing certain goods originating in Crimea and Sevastopol, and the provision of related (re)insurance.

In July, the EU refined its measures to target key sections of the region's economy. A ban was imposed on the supply of certain goods (and the provision of financing, and financial assistance, in connection with them) for use in the following sectors in Crimea and Sevastopol:

- Transport
- Telecommunications
- Energy
- Oil, gas and mineral resources

In December, the previous measures were largely replaced with more extensive sanctions targeting the same sectors of the Crimean economy. A 10 page list of restricted goods was included in the relevant EU Regulation setting out the new prohibitions. In addition to the sectors already targeted, the EU introduced prohibitions in relation to:

- Real estate (and broad ranging investment) in Crimea and Sevastopol
- Tourism activities and cruise services in Crimea and Sevastopol

Like the Russia sanctions, the EU and US measures imposed on Crimea were gradually tightened over the course of the year. Although broad prohibitions are currently in place, the EU has implemented a grace period of until **21 March 2015** for certain prohibited activities whilst allowing other contracts to run off.

In December 2014, the US imposed similar measures concerning Crimea, broadly prohibiting US Persons from investing in or trading with Crimea. The US also issued a General License providing US businesses with a window until **1 February 2015** to wind down any operations prohibited under the US sanctions regime.

3. Cuba: Changing the music

There was a marked change in tone between the US and Cuba in December 2014, when a deal was reached after over half a century of a full US trade embargo on Cuba. The US has now implemented a variety of new policy changes, including those intended to help develop private business in Cuba in the following sectors:

- Telecommunications (including the internet)
- Financial services
- Trade
- Shipping

Although the majority of US prohibitions remain in force, the US has eased certain measures, including:

- Authorising US exports to Cuba of building materials for residential construction; tools and equipment for private sector farming; and tools, equipment, supplies and instruments for private sector entrepreneurs
- Permitting US financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorised payments
- Authorising exports of communications equipment to enhance the ability of Cubans to communicate via the internet
- Allowing global insurance policies for health, life or travel cover for individuals who travel to or within Cuba

Historically, Cuba has presented a challenge to the worldwide (re)insurance market because the US prohibits US (re)insurers and their foreign subsidiaries from participating in Cuban risks. In time, the diplomatic thaw in relations between the US and Cuba may present (re)insurers with additional opportunities in a market with potential for future growth and leaves open the possibility for further liberalisation of US sanctions.

4. North Korea: A prelude for further sanctions?

In response to the cyber-attack on Sony Pictures and threats against cinemas and moviegoers, a US asset freeze has been imposed on officials, agencies and controlled entities of both the North Korean government and the Workers' Party of Korea. US (re)insurers are prohibited from participating in cover provided to persons subject to the US asset freeze.

It is unclear whether additional sanctions measures will be imposed (by either the US or EU) during the course of 2015. The EU position remains unchanged except for amendments to the list of North Korean asset freeze targets.

5. Iran: One more JPOA interval

Last year the joint plan of action (or JPOA) talks continued in a staccato fashion between the P5+1 and Iran concerning the future of the latter's nuclear programme. After the parties failed to reach an agreement by November, the deadline was extended to 30 June 2015. While this interval remains in place, **certain sanctions also remain suspended until that date**.

The EU's suspension of its prohibition on the provision of (re)insurance in relation to the transport of Iranian origin crude oil will continue until 30 June. The EU has also increased the threshold in relation to the transfer of funds to/from Iran before authorisation must be sought from the relevant competent authority. The relief under US sanctions is similarly continued until 30 June, but largely applies only to non-US (re)insurers.

It seems that most (re)insurers are not taking advantage of these suspensions pending any breakthrough in the negotiations. It may be that, even if an agreement is reached, there will only be a gradual unwinding of sanctions. This approach would require (re)insurers to focus on each milestone to see what opportunities were presented.

6. Syria: Accent notes

2014 saw little change to the financial sanctions first imposed on Syria by the EU in late 2011 and early 2012. *"Accent notes"* have been added to the EU's sanctions programme on Syria, with the **(re)insurance of jet fuel and fuel additives now being prohibited**. The existing, more extensive, restrictions (including those related to energy) remain in place. The prohibitions on providing (re)insurance to the State of Syria, its Government, its public bodies, corporations or agencies (or any person acting on their behalf or at their direction) also remain in force.

Aside from additional asset freeze designations, there were also no meaningful changes in US sanctions concerning Syria in 2014.

Finale

Sanctions will no doubt remain an important instrument in the EU and US's repertoire of diplomatic responses. In 2014, sectoral sanctions proved to be the foreign policy tool of choice in relation to Russia and Crimea and we expect to see increasing use of this tool in future.

For now, the tempo and scope of changes - whether restrictive or liberalising - have created an increasingly complex sanctions framework, with which (re)insurers must continue to comply.

(Re)insurers should therefore be tuned in to further developments this year and, in the meantime, continue to mitigate their exposure to sanctions through conducting risk sensitive due diligence and using appropriate sanctions exclusion clauses.

Further information

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