



Impact of US Sanctions on Trade Involving Venezuela and P&I August 2020

Dear Members,

Recent escalation of sanctions imposed against a number of ships and shipowners by the United States in respect of [violations of trade prohibitions against Venezuela](#), together with the US government's heightened due diligence expectations, (see Group Circular [L.353](#)) bring into sharp focus the need for vigilance in relation to activities involving countries affected by US trade sanctions ("sanctioned countries").

This Circular serves as a reminder of the difficulties that sanctions can create in relation to the provision of cover. Enforcement of sanctions by relevant authorities may in some cases prohibit payments under contracts that support trade, including insurance and reinsurance. Members should therefore bear these risks in mind if contemplating trade involving or connected with those countries.

Sanctions risks vary from country to country. In the case of Venezuela, Russia and Ukraine, the impact of US sanctions will depend on the parties involved, and the specific nature of the activities conducted. In the case of Cuba, North Korea, Iran and Syria, the US applies, inter alia, general restrictions prohibiting US persons from providing any form of goods or services, save when licensed or exempted.

Rules Provisions

The Club's rules and terms of entry enable the Club to meet its legal obligations, whilst protecting the membership from the impact of sanctions as a result of the activities of any individual member. The Club's rules and terms of entry therefore include extensive provisions in respect of sanctions, including:

- A cesser provision pursuant to which an entered vessel will cease to be insured from when it is employed in a manner that may expose the member or the Club to the risk of any sanction or adverse action;
- An exclusion of cover for liabilities arising in relation to trade which is unlawful, or which exposes the Club to the risk of any sanction or adverse action;
- An exclusion of recovery in relation to any claim payment which may expose the Club to the risk of any sanction or adverse action;
- An exclusion of liability in respect of any sums which are not recovered by the Club under its pooling and reinsurance arrangements by reason of sanctions. In the event of any such shortfall the member would be entitled to recover only the net amount actually recovered by the Club.

Claims-handling

Many, if not most, banks which operate internationally comply with US primary sanctions¹ either because they are compelled to do so by law, or because if they do not, they may lose access to the US financial system. This has a practical impact on the Club's ability to instruct and pay service providers in relation to claims with a nexus to a sanctioned country. Banking difficulties may mean that it is not possible for the Club or its reinsurers to respond to a claim, or to do so as quickly or as effectively as they would otherwise. In the event of a demand for security for a claim against a member, the Club may not be in a position to do so, even if the member's activities do not directly involve a sanctioned entity.

Reinsurance

As mentioned in previous Circulars, most recently in the context of the Group Circular [L.333](#) on Venezuela, claims arising out of trade involving sanctioned countries or designated entities could be excluded from cover and pooling. In some cases, furthermore, the Club may not be able to make a full recovery under the Group Excess Loss Reinsurance Contract, in respect of a claim in excess of the Pool Retention (currently US\$100million), or under the Club's other reinsurance arrangements, because some participants on those programmes are subject to US primary sanctions. This risk is recognised by all IG clubs and the Group's above-mentioned Circular addresses those potential consequences:

“Such shortfalls in recovery may run to many millions of dollars and under the rules of all International Group clubs could fall to the Member, if they arose as a result of an inability to pay as a result of sanctions”.

Whilst the Club seeks to minimise that risk as far as possible, it must also ensure that the overall quality of reinsurance security remains high, to reduce the risk of default in the majority of claims unaffected by US sanctions.

Summary

US sanctions can create a variety of difficulties for the Club and members. Given the wide reach of US sanctions, the risk of such sanctions affecting payments by insurers and reinsurers cannot be ruled out. This may potentially impede or interfere with claims and liabilities that Members may otherwise recover under policies of insurance and of reinsurance.

¹ US persons and transactions with a US nexus must comply with US primary sanctions. The definition of US persons generally includes legal entities incorporated in the US, their foreign branches/subsidiaries and the branches/subsidiaries of any foreign entities that are located in the US.

Members wishing to consider the potential impact of sanctions upon insurance cover and recoveries are encouraged to seek advice from their usual contacts at the Club.

Yours faithfully,

STEAMSHIP INSURANCE MANAGEMENT
SERVICES LIMITED