

CLIENT ADVISORY

UKRAINE-RELATED SANCTIONS — A RISK MANAGEMENT VIEWPOINT

Ongoing unrest in Ukraine has had significant risk management implications for multinational companies — particularly in Central and Eastern Europe, but also globally.

In July, the US, the European Union, and Canada imposed new sanctions against several Russian state-owned banks and the Russian energy and defense sectors. These followed earlier sanctions against Russia imposed by the US, the EU, Canada, and other governments in response to Russia's annexation of Crimea in March 2014.

Among the most significant recent sanctions developments are the coordinated moves by the US and the EU to restrict access by Russia to US and EU capital markets. On July 16, 2014, the US Department of Treasury announced sanctions prohibiting US companies from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity of specifically designated Russian banks and other companies, including Gazprombank, Bank of Moscow, VTB Bank, and Rosneft. Shortly following, the EU prohibited the purchase, sale, and other dealings in transferrable securities and money-market instruments with a maturity date of 90 days or longer issued after August 1, 2014, by major Russian state-owned banks, including Gazprombank, VTB Bank, and Sberbank, Russia's largest lender.

New EU sanctions include a limited arms embargo and restrictions on exports of energy sector and military technologies to Russia. The US and Canada had already imposed strict restrictions on exports to Russia, including military technologies.

In addition, the US, the EU, Canada, Japan, and Australia have travel bans and asset freezes in place against a growing number of Russian politicians and business leaders, as well as asset freezes against a smaller number of Russian banks and companies. Note that the US prohibits all transactions by US companies and US nationals with individuals and organizations subject to an asset freeze by the US, as well as companies owned (50% or more) by such sanctions targets.

In response to these sanctions, Russia has hit back with import bans on foodstuffs and beverages from several Western European nations and the US. Other retaliatory restrictions may follow from Moscow.

Marsh continues to monitor these global developments and to assess their potential impact upon our clients' global insurance programs. We recommend that multinational organizations discuss these sanctions with their own legal counsel to understand the potential impact on their operations, and any resulting change to their organizations' risk profiles.

While it is impossible to predict future developments, organizations that do business with Russia and Ukraine may wish to consider the following practical questions:

DOES THE ORGANIZATION HAVE A MECHANISM FOR IDENTIFYING WHETHER ANY OF ITS GLOBAL OPERATIONS ARE DOING BUSINESS WITH INDIVIDUALS OR BUSINESSES THAT MAY BE SUBJECT TO TRADE SANCTIONS?

Consider whether the company screens its clients and payees against trade sanctions watch lists. Examples of such watch lists are those maintained by the United Nations Security Council, the US Department of the Treasury's Office of Foreign Assets Control (OFAC), the EU, and other regulators.

DO ANY OF THE ORGANIZATION'S OPERATIONS HAVE CONTACT OR INTERACT WITH THE INDIVIDUALS OR BUSINESSES THAT ARE SUBJECT TO THE EXISTING TRADE SANCTIONS OR COMPANIES OWNED OR CONTROLLED BY THEM?

If the answer is "yes," Marsh recommends immediately seeking the advice of legal counsel to ensure compliance with sanctions.

ARE THE ORGANIZATION'S INTERNATIONAL OPERATIONS AWARE OF SANCTIONS AND IS THERE A PLAN IN PLACE TO ENSURE OPERATIONAL COMPLIANCE WITH EXISTING SANCTIONS AND/OR POTENTIAL FURTHER SANCTIONS?

Creating and maintaining clear lines of communication with international subsidiaries can help to ensure alignment of purpose and may speed identification and resolution of any business activities that may not be compliant with sanctions.

WILL THE ORGANIZATION BE ABLE TO MAKE RECOVERIES UNDER AN INSURANCE POLICY IF THERE ARE SANCTIONS?

Coverage under any insurance policy is always subject to laws, as well as the terms and conditions of the policy. On a broad basis, if a law or regulation prohibits an insurer from making payments under a policy, then that prohibition likely will supersede any policy language and expectation of payment.

DO THE ORGANIZATION'S CURRENT INSURANCE POLICIES CONTAIN EXCLUSIONS OR CANCELLATION WORDING RELATED TO SANCTIONS?

Insurance policies may exclude or limit coverage due to sanctions, or call for policy termination in the event of sanctions. These provisions vary from policy to policy. Multinational organizations should review the terms and conditions of their insurance policies to better understand how each will respond.

DOES THE ORGANIZATION CURRENTLY PURCHASE POLITICAL RISK, TRADE CREDIT, OR OTHER TYPES OF INSURANCE THAT MAY BE CALLED UPON IN THE EVENT OF LOSS DUE TO ESCALATING TENSIONS IN THE REGION?

Multinational organizations should pay special attention to analyzing such policies, which may have reporting obligations that require them to report situations that are likely to give rise to a loss — or could include conditions that require them to cease new shipments. Organizations should maintain an open line of communication with insurance underwriters to obtain any necessary approval before taking actions to minimize loss. For trade credit insurance, it is important to monitor approved buyer credit limits to watch for insurer limit reductions and cancellations.

DOES THE ORGANIZATION RELY UPON SUPPLIERS (OR CUSTOMERS) THAT MAY BE AFFECTED BY THE EXISTING OR FUTURE SANCTIONS?

The risk issues associated with sanctions may go well beyond an organization's own operations. Multinational organizations may wish to identify alternative suppliers of critical materials or services in order to ensure continuity of business.

As with any fluid situation, a key risk management strategy is to maintain a clear line of sight to current events and place them into context.

For more information, please contact your Marsh representative.

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