

CYPRUS FIDUCIARY ASSOCIATION

**CYFA 2022 Presentation/
Discussion Event: “The
Russia/Ukraine Conflict – New
risks for Cypriot ASPs and new
problems; feedback from the
Insurance market”**

**Wednesday, 20th July, 2022
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Commentary/ Q&A: Mrs Loukia
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Background

- Russia/ Ukraine conflict divided the world
- Serious implications for ASPs
 - Challenges for Ukrainian clients
 - Sanctions on Russia/ Belarus
- Purpose:
 - Present the new risks to ASPs
 - Provide feedback on insurable risks
 - Discuss common problems from an insurance perspective
 - Discuss risks from operating in new jurisdictions

Our inspiration...

“It is not the strongest of the species that survives, nor the most intelligent. It is the one that is the most adaptable to change.” - Charles Darwin.



History repeats itself

- Insurance in Russia was nationalized after the 1917 revolution
- After the end of World War II insurers coming from the losing side were technically insolvent and their international assets confiscated
 - Allianz has since then become the world's largest insurer
 - Generali- No2 in Europe, top 5 in the world
 - Tokio Marine/ Mitsui Sumitomo are today world class insurers
- A few things remain constant in conflicts
 - A country's stance on a conflict, determines the stance of its insurers; insurers need their licence
 - Insurance (a de-facto globalized business) becomes fragmented
 - After the conflict is over, global business resumes

- Serious damages and disruptions in the country
 - Damages/ viability of Ukrainian subsidiaries of Cyprus holding companies (covered by insurance?)
 - Ability of Ukrainian international groups to operate via Cyprus (risks to Cyprus fiduciaries from director decisions)

Russia/ Belarus- challenges



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Whose Sanctions?

- EU, US, UN, UK, Etc
- For Legal/ Criminal
 - Only ASP and client matter
- For Operational every sanctions regime matters
 - ASP
 - Client
 - Insurers (depending on their domicile are also exposed)
 - Impact on their licence/ ability to conduct business

The insurer perspective

- US owned/based insurers – US sanctions
- Lloyd's- UK/ EU and depending on ownership US
- EU owned/ based insurers – EU sanctions

- What if an insurance program has a combination of insurers (syndication)?
- What happens if the reinsurer has sanction issues?

A gordian knot?



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 of 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 sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

Let's try to work with it

- Professional Firm in Cyprus, engagement in Cyprus, insurance policy in Cyprus, claim in Cyprus for Professional Liability
 - Issue if claim is from a sanctioned company/ individual; our clients are not sanctioned; so we are Ok (?)
- What if the claim is in Russia? What if the claim is not from our client (business counterparties/ shareholders/ creditors/ banks/ the liquidator)?
 - Let's take another look.

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 of 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 sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

Interesting Variation 1

The Insurer shall not be deemed to provide cover and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit **would expose** the Insurer, **its parent company or its ultimate controlling entity to any sanction**, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Duchy of Luxembourg or the United States of America. All other terms, conditions and exceptions remain unchanged.

Interesting Variation 2

The insurer is not liable to make any payments for liability under any coverage sections of this policy or make any payments under any extension **for any loss of claim arising in, or where** the insured or **any beneficiary** under the policy **is a citizen or instrumentality of the government of, any country(ies)** against which **any laws and/or regulations governing this policy and/or the insurer**, including US law, have established an embargo **or other form of economic sanction** which have the effect of prohibiting the insurer to provide insurance coverage transacting business with or otherwise offering economic benefits to the insured or any other beneficiary under the policy. It is further understood and agreed that **no benefits or payments will be made to any beneficiary(ies) who is/are declared unable to receive economic benefits under the laws and/or regulations governing this policy and/or the insurer, including US law.**

Let's try to work with it

- With Variation 1, if the insurer feels they are exposed to (US) sanctions they can deny payment. The fact that the insurance policy (and possibly the claim) are in Cyprus are irrelevant.
- With Variation 2, if a beneficiary is a mere citizen of a sanctioned country, the insurer can deny payment.
 - Is a claimant under a liability insurance policy a beneficiary? Probably yes.
 - The fact that this is a Cyprus insurance policy is again irrelevant

- All contained sanction clauses (with variations)
- The conflict and the enforcement of sanctions on Russia/ Belarus expanded the negative impact of sanctions on insurance coverage
- Where the insurer is a US-based company the negative impact was significant

Post-Ukraine

- Specific emphasis on Russia/ Belarus
- Territorial exclusions, mainly from US-based insurers and some Lloyd's syndicates

There shall be **no coverage** afforded **or benefit** provided by this policy for any:

- i. entity organized, headquartered, incorporated, registered or established in a Specified Area; or
- ii. natural person resident or located in a Specified Area; or
- iii. claim, action, suit or proceeding brought or maintained in a Specified Area; or
- iv. loss of, theft of, damage to, loss of use of, encryption of, interruption to the operations or availability of, or destruction of any property (tangible or intangible) located in a Specified Area, including, but not limited to, any computer system, data, money or securities located in a Specified Area.

For purposes of this endorsement, “Specified Area” means:

- a. The Republic of Belarus; or
- b. The Russian Federation as recognized by the United Nations (or their territories, including territorial waters, or protectorates where they have legal control; legal control shall mean where recognized by the United Nations).

- Prior to the Ukraine conflict US insurers sanction clauses left a window for securing cover where the claim/ claimant were not in the sanctioned country
- Post Ukraine conflict, no cover for any exposure in Russia/ Belarus
- Insurance policies that renewed after March 2022 include a Territorial exclusion

this Policy excludes any loss, damage, liability, cost or expense of whatsoever nature, directly or **indirectly**, arising from or **in respect of** any:

- i. entity domiciled, resident, located, incorporated, registered or established in an Excluded Territory;
- ii. individual that is resident in or located in an Excluded Territory;
- iii. claim, action, suit or enforcement proceeding brought or maintained in an Excluded Territory; or
- iv. payment in an Excluded Territory.

This exclusion will not apply to any coverage or benefit required to be provided by the insurer by law or regulation applicable to that insurer, however, the terms of any sanctions clause will prevail.

For purposes of this exclusion, “Excluded Territory” means:

- Belarus (Republic of Belarus); and
- Russian Federation; and
- ~~Ukraine (including the Crimean Peninsula and the Donetsk and Luhansk regions)~~

- Original version excluded Ukraine, but amended version has been negotiated
- Language milder/ exclusion more limited
- Provision to provide coverage where required by law/ regulation, but subject to sanctions exclusion (reviewed earlier)
- Language creates ambiguity (indirectly, in respect of), especially for Directors' liability
- Exclusion applied mainly in the Financial Institutions' Market; expected on Professional Indemnity

- Territorial exclusions applied both by US insurers and some parts of the London market
- Effect of US insurers is to exclude any form of Russia/Belarus cover
- Effect of London market clause is to limit the coverage, but questionmark applicability to mandatory insurances
- Cypriot insurance companies: Original sanction clauses

Food for thought

- What is the impact on Professional Indemnity?
- What is the impact on Directors' Officers Liability Insurance?
- What is the impact on Financial Crime/ Cyber risk?
- What is the impact when (in our capacity as Directors) we take insurance decisions for our client's Cyprus (holding) company?
- Every ASP needs to review these topics based on their business model, client-base and existing insurance arrangements

What do we do?





- Move our insurance to a Cyprus insurer if their sanction clauses are simpler.
 - For how long?
 - Do they understand your risks?
 - Do they have the capacity?
 - Can they insure your offshore service companies/ affiliates?
- Introduce Russian territory exclusions/ liability caps to engagement letter
 - Do they apply to third party claimants? Will they apply to personal appointments (directors/ officers)?
- Obtain stricter indemnities
 - Are they legally enforceable?
 - Do they apply to your employees when they act as Directors/ Officers?
- Take a risk-based approach when considering engagements
- Insurance is a useful risk-transfer solution for pure third party exposures.
 - Review your contracts now and repeat the exercise as situation develops
 - Plan your renewal well ahead, obtain advice and (if you have Russian exposure) consider sanction restrictions on your insurance program

Innovation/ Evolution



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A few words of caution

- ASP regulation in some territories is in its infancy
- Insurers licenced in Cyprus probably not necessarily licenced in those jurisdictions
- Check that your insurer is licenced in the new territory
- An interesting future that merits detailed discussion well ahead of your next PI/ D&O renewal

Wrap up

- Russia Ukraine conflict introduces significant (potentially uninsured) risks to ASPs
- Insurance market approach is to broaden sanction exclusions. US insurers effectively exclude all Russia related exposure
- Solution is a combination of:
 - smart risk mitigation actions
 - Re-alignment of insurance
- Any evolution of ASP business model to other territories requires thought, risk mitigation and originality in insurance design
- Where as directors we approve clients' insurances, such decisions should be made following independent advice

Q&A



Thank you.



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