

# The U.S. Sanctions Laws And Their Impact On The Global Marine Insurance Market



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# Overview Of The U.S. Sanctions Regime

- Administered by OFAC
- “Holistic” sanctions - Cuba, Iran, North Korea and Syria
- *Who must comply?*
  - ✓ U.S. citizens and permanent residents, wherever located
  - ✓ Entities organized under U.S. law, and their foreign branches
  - ✓ Any entities in the U.S., including subsidiaries of non-U.S. entities
  - ✓ Certain sanctions have extra-territorial effect (*Iran sanctions*)

# What Due Diligence Measures Should The Global Marine Insurer Undertake?

- Implement the U.S. Economic and Trade Sanctions Clause recommended by AIMU:

Whenever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions, such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), such coverage shall be null and void.

Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any claim that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

- ✓ Use it in many types of marine policies
- ✓ Use it in certificates
- ✓ Use it in banker's endorsements

## The Global Marine Insurer's Due Diligence (cont'd)

- Establish a comprehensive economic sanctions compliance program
  - 2017 - U.S. Insurer settled with OFAC for multiple violations of U.S. sanctions:
    - Factors *mitigating* against harsher penalties:
      - ✓ Insurer had an OFAC compliance program
      - ✓ Insurer *voluntarily self-disclosed* apparent violations
      - ✓ Insurer took remedial acts, i.e., adopted broad U.S. sanctions exclusion

## The Global Marine Insurer's Due Diligence (cont'd)

- Apply for an OFAC license if needed
  - ✓ Authorization to engage in prohibited transaction
- Case Study: Emergency towing of a U.S. vessel to Cuba
  - ✓ U.S. Hull & Machinery policy covers salvage charges
  - ✓ U.S. sanctions exclusion triggered = coverage is null and void
  - ✓ License obtained from OFAC to pay insurance claim

## Case Study: Application In An Open Cargo Policy

- U.S. insured commissioned vessel for Egypt to India voyage
  - ✓ Insured conducted due diligence of vessel owner (Dubai company)
  - ✓ Unknown to insured – Dubai company was controlled by Iranians
  - ✓ While in transit, vessel broke down in Pakistan
  - ✓ Vessel then bought by Iranian company and brought to Iran
- *Is the U.S. sanctions exclusion triggered even though the insured conducted due diligence?*
- *Is coverage null and void under the U.S. sanctions exclusion?*
- *What is the solution?*

## Reference Materials & Links

- U.S. Economic And Trade Sanctions clause
  - ✓ <http://www.aimu.org/forms/ecoandtrade.pdf>
- OFAC, Sanctions Programs And Country Information
  - ✓ <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>
- OFAC, Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists
  - ✓ <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

## Reference Materials & Links (cont'd)

- OFAC, Frequently Asked Questions: General Questions
  - ✓ [https://www.treasury.gov/resource-center/sanctions/Documents/2006\\_mariners.pdf](https://www.treasury.gov/resource-center/sanctions/Documents/2006_mariners.pdf).
- OFAC, Frequently Asked Questions: Sanctions Compliance, Compliance For The Insurance Industry
  - ✓ [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_compliance.aspx#insurance](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#insurance)
- OFAC Notice to Mariners
  - ✓ [https://www.treasury.gov/resource-center/sanctions/Documents/2006\\_mariners.pdf](https://www.treasury.gov/resource-center/sanctions/Documents/2006_mariners.pdf).



## Reference Materials & Links (cont'd)

- OFAC, Frequently Asked Questions: Regarding Iran Sanctions
  - ✓ [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf).
  - ✓ [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_winddown\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf)
  - ✓ [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_iran.aspx](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx)
- European Commission Statements
  - ✓ <http://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-3572-F1-EN-MAIN-PART-1.PDF>
  - ✓ [http://ec.europa.eu/dgs/fpi/what-we-do/blocking\\_statute\\_en.htm](http://ec.europa.eu/dgs/fpi/what-we-do/blocking_statute_en.htm)
  - ✓ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0807\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0807(01)&from=EN)

# THANK YOU

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