

THE IMPACT OF SANCTIONS ON P&I COVER



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The rule changes proposed for the 2011 policy year in our circulars dated 16 December 2010 and 6 January 2011 were approved by members on 26 January 2011. These could have serious implications for members, even when members are themselves 'innocent' of breaching sanctions.

Club cover is supported by the International Group Pooling Agreement and reinsurance coverage bought from the worldwide commercial reinsurance market. The clubs and their reinsurers must comply with local laws and ensure that they do not provide cover to sanctioned entities. The rule changes, in part, have been required by the reinsurers under these reinsurance arrangements, and are necessary to ensure that claims do not put the clubs or reinsurers in breach of sanctions, which could have serious consequences for the club and their reinsurers and for the membership as a whole.

Sanction regimes continue to develop (see our article on the Ivory Coast). We summarise here some of the important implications for club cover caused by sanction regimes:

- Under some legal regimes, a member's sanctionable conduct may automatically put the club in breach of sanctions.
- If a member's sanctionable conduct causes the club itself to be in breach of sanctions then cover automatically ends in relation to the ship in breach, but not sister or associated ships (rule 17.2(5)); there has to be a link between the member's conduct and the club being held to be in breach. The mere fact alone that a member himself is in breach of sanctions does not of itself terminate or prejudice club cover. It is therefore not the case that ANY breach of sanctions will automatically terminate cover.
- The rules are not limited to US sanctions or those levelled against Iran; they apply in respect of any sanction regime.
- If risks are reinsured or shared with other insurers, under rule 1.3.3: *"the member is entitled to recover from the club only the net amount actually recovered under such reinsurance... whether or not the member has notice of such reinsurance, its terms, or the identity of the reinsurers"*.
- Local legal rules may prevent a reinsurer from paying a claim. If so, the member's claim will be reduced proportionately.

- Our rules also contain an express provision dealing with reinsurance recoveries (including recoveries from parties to the pooling agreement) in respect of sanctions (rule 6.22 or 6.15 under the Standard Offshore Rules). If the club is unable to recover part of a claim from reinsurers or parties to the pooling agreement because of sanctions legislation, then the member's claim against the club is also reduced.
- A member's sanctionable conduct may mean that a reinsurance recovery is prejudiced and reduced. However, reinsurance recoveries may also be reduced if a reinsurer (or party to the pooling agreement) is unable to pay due to local sanction regimes.
- Important: It should be noted that there does not need to be a causative link between the member's conduct and any reduction in recovery from reinsurers/pooling partners. If a reinsurer or pooling partner cannot pay a claim due to a threat of thus being in breach of sanctions then the member's claim for reimbursement is written down (even if the member is 'innocent' and is not himself in breach of sanction regimes). We believe that these rules put into words that which would happen in any event. Simply put, if a reinsurer cannot pay, then the member's claim will be written down.

Our comments above are not exhaustive. Members are recommended to read our dedicated Sanctions Bulletin of December 2010. Members should continue to exercise diligence in respect of commitments with countries or individuals who may be subject to sanction regimes. Specific local legal advice should be taken.

