Keeping a watching brief: sanctions

Ben Chandler, of The Standard Club, reviews the impact of sanctions on the maritime world, with an Asian focus

In the past two years, the use of international economic sanctions has returned to the forefront of international relations and the global geopolitical landscape. Driving this trend has been the United States' return to an aggressive foreign policy during the presidency of Donald Trump. This has involved the re-imposition of sanctions previously lifted in countries such as Iran, Myanmar and Cambodia; and targeting new sanctions at countries deemed hostile to the Trump administration.

The United Nations (UN) and European Union (EU) have also continued with their own sanctions programmes.

Effect on shipowners/marine insurers

The renewed vigour in the use of sanctions has created additional pressures and burdens on both shipowners and marine insurers. Shipowners have needed to take steps to keep up to date on the changing sanctions landscape and carry out enhanced commercial due diligence to ensure that no commercial activity being undertaken involves a designated sanctioned entity or otherwise breaches sanctions. Similarly, marine insurance providers must be vigilant to international sanctions in relation to their clients' activities. This article focuses on how current trends particularly affect the Asian market.

Sanctions regimes

There are two main sanctions regimes that are most likely to affect shipowners/marine insurers operating in Asia.

UNSC sanctions

Through its resolutions, the UNSC (United Nations Security Council) imposes prohibitions on activities or transactions relating to specified sanctioned countries or individuals. These sanctions are in turn implemented by UN member states through local legislation. Where such legislation is in place, a person who breaches the UNSC sanctions will be liable to criminal penalties. As an example, UNSC sanctions are implemented in Singapore through regulations enacted under the UN Act and MAS Act. Breaches of the UNSC sanctions under Singapore law can result in fines of up to US$1 million and imprisonment of up to 10 years.

US sanctions

Unlike UNSC sanctions, US sanctions are *not* implemented through local legislation and they largely remain targeted at US persons and persons within the US apart from certain US sanctions regimes which also target non-US persons, eg Iran. Non-US persons operating in Asia may also be exposed to the risk of violating US sanctions where:

- They are found to have assisted a US person in evading US sanctions.
- The individuals involved were present in the US when the US sanctioned transaction took place – in which case the individuals will be treated as US persons.
- They are involved in sanctioned transactions which have US connections – for example, where payments are to be made in US dollars, or where US insurers, banks or other US persons or entities are involved.
- They are involved in the re-export of US goods or technology to countries subject to US sanctions.
- They are involved in a transaction that is in breach of US "secondary sanctions" which are targeted against non-US persons.

In addition, a non-US person may find itself "blacklisted" by the US where it continues to do business with US sanctioned entities.

Sanctions imposed by other countries

The US is not the only country that independently imposes "stand-alone" sanctions against other countries or individuals. Examples of such sanctions include those imposed by UAE against Qatar and Russia's sanctions against Turkey. Hence, when carrying out commercial due diligence, shipowners and marine insurers must be alert to all relevant sanctions regimes that may apply.

Examples of recent sanctions developments with respect to specific countries in Asia

Iran

By ending its participation in the Joint Comprehensive Plan of Action (JCPOA), the US has broken ranks with the EU and major economies including China and Russia, which remain parties to the JCPOA. As of 4 November 2018 the US re-imposed sanctions on a range of Iran-related transactions.

The new US sanctions serve to significantly increase the risk of violations by shipping companies involved in shipping Iranian cargo. The restrictions placed on insurance cover also means that Iranian vessels are at risk of having insufficient liability cover in the event of a casualty.

In response to the US sanctions, the EU has implemented "blocking regulations" that seek to counteract its effects. However, these "blocking regulations" only affect EU persons so are likely to have little impact in Asia, unless, potentially, a person or entity primarily domiciled in Asia has a sufficient nexus/connection with the EU so that they are subject to EU law.

North Korea

US sanctions

In March 2018 the US Treasury Department of the Office of Foreign Assets Control (OFAC) amended and reissued North Korean sanctions regulations. The regulations now provide:

- Property of US persons is blocked/frozen in the US if such US persons engage in significant importation from or exportation to North Korea of any goods, services, or technology.
- Foreign financial institutions are prohibited from engaging in most North Korea-related transactions that transit the US financial system.

- Due to the "180 rule" included in the regulations, any ship which calls at a North Korean port or engaged in a ship-to-ship transfer with a vessel that has called at a North Korean port is barred from US ports for 180 days.

UNSC sanctions

In August 2017 the UNSC voted to impose new sanctions against North Korea. Resolution 2371 further expanded the sanctions against North Korea by:

- Prohibiting North Korea from exporting coal, iron ore, lead ore and seafood;
- Prohibiting designated vessels engaging in prohibited activities and from calling at ports of UN member states;
- Prohibiting chartering of North Korean vessels; and
- Extending the list of entities and individuals subject to travel bans and asset freezes.

Fronting

There have been regular occurrences of companies in Asia "fronting" for North Korean entities which are sanctioned. These companies hold themselves out as buyers of cargo from international suppliers and complete ostensibly legitimate trades, but then supply the cargo to North Korean entities in breach of sanctions, for example through ship-to-ship transfers at sea.

Given that such North Korean-linked trades may also include non-North Korean entities and/or ships, and "fronting" activity may be taking place, shipowners/marine insurers must be particularly vigilant when carrying out commercial due diligence, to ensure that the trade does not breach sanctions. Given that much of the "fronting" activity takes place at "hotspots" in eastern Asia, this trend arguably represents an enhanced sanctions risk for Asian shipowners/marine insurers.

Myanmar/Cambodia

Both the US and EU have recently announced fresh sanctions against Cambodia and Myanmar currently taking the form of asset freezes and travel bans on designated person/entities in those countries.

Marine insurance providers and international economic sanctions

In response to the current sanctions climate, marine insurers (including those based in Asia) use a variety of strategies to handle and minimise sanctions-related risk.

Enhanced KYC and due diligence procedures

Marine insurers must have robust "know your client" (KYC) procedures to ensure that no new insurance business involves insuring a sanctioned entity, and that any commercial activity arising from this business does not involve a sanctionable element.

Exclusions to cover

Marine insurers include provisions in their policies/rules which:

- Exclude coverage of an insured loss or claim if it arises from sanctionable activity; and
- Include termination/cessation of insurance provisions which terminate cover for an insured ship if the ship has engaged in sanctionable activity and/or if the provision of insurance to that ship exposes the insurer to sanctions.

Such provisions allow insurers to minimise sanctions exposure and ensure that the insurer does not engage in sanctionable activity as described above.

Sanctions guidance to clients/members

Marine insurers now place an increased emphasis on providing guidance to their assureds on potential sanctions risks. The Standard Club has a 20-person strong sanctions team which includes representatives from both the club's headquarter office in London and each international office. From the Asian perspective, several members of the club's Singapore office are involved in handling sanctions related issues on a regular basis, in conjunction with the Club's international sanctions and compliance teams.

"Shipowners and marine insurers need to continue to monitor the evolving sanctions climate closely and continue to develop strategies to respond to new and existing sanctions risks"

The sanctions guidance has evolved to become a key part of Club service and Clubs will often act as an early point of contact for a member to discuss a sanctions issue, before the matter is then elevated to external sanctions experts as necessary.

Furthermore, many Clubs now place considerable emphasis on regularly producing sanctions-themed guidance materials (eg update bulletins and circulars), which are available free of charge from the Clubs' websites and which are designed to provide user-friendly guidance to the Clubs' members.

Industry consultation/collaboration

As well as providing guidance to their own clients/members, marine insurers are also involved in broader consultation and collaboration across the industry, which The Standard Club is actively involved in.

The future

The use of international economic sanctions is closely linked to the evolving foreign policy outlooks of the US, EU and UN, as well as other states using such sanctions as a political strategic tool. Shipowners and marine insurers will need to continue to monitor the evolving sanctions climate closely and continue to develop strategies to respond to new and existing sanctions risks.

- *The author would like to thank Karnan Thirupathy and Andrew Cook of Kennedys Legal Solutions in Singapore for their helpful input and guidance.* ***MRI***

Ben Chandler

Ben Chandler, senior claims executive, The Standard Club