



FOREIGN ASSETS CONTROL REGULATIONS AND THE INSURANCE INDUSTRY

U.S. insurance carriers, responding to the foreign needs of clients, routinely offer international insurance to their domestic clients. U.S. insurers form alliances with foreign companies to gain footholds in countries where client bases are rapidly expanding. U.S. underwriters dramatically increase their involvement in lucrative international reinsurance markets. Everywhere you turn traditional barriers, as well as protections, are falling.

It is critical that the insurance industry gain a better understanding of the economic sanctions and embargo programs of the United States. The programs are a front line defense against foreign threats to our national safety, economy, and security. Sudan and Cuba are the focus of full-fledged trade embargoes, including the blocking of assets in U.S. jurisdiction. There are restrictions on imports from Burma and North Korea; new investments in Burma; imports from and exports of goods and services to Iran; exports to Iraq; imports of goods, technology, or services produced or provided by foreign persons designated by the Secretary of State who promote the proliferation of weapons of mass destruction; imports of rough diamonds from Liberia; imports of uncertified diamonds; the receipt of donations in the form of gifts or charitable contributions from the governments of Syria or North Korea; and prohibitions against transactions with designated international narcotics traffickers, terrorists, foreign terrorist organizations, parties named in or pursuant to Executive Order 13304 relating to persons who threaten international stabilization efforts in the Balkans, and certain individuals tied to the regime in Zimbabwe.

OFAC

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") administers and enforces sanctions policy, based on Presidential declarations of "national emergency," under nine basic statutes: the Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44 ("TWEA"); the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06 ("IEEPA"); the Iraqi Sanctions Act, Pub.L. 101-513, secs. 586-586J, 104 Stat. 2047-55 ("ISA"); the United Nations Participation Act, 22 U.S.C. § 287c ("UNPA"); the International Security and Development Cooperation Act ("ISDCA"), 22 U.S.C. 2349 aa-8 and -9; the Cuban Democracy Act ("CDA"), 22 U.S.C. § 6001-10; the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91; the Antiterrorism and Effective Death Penalty Act (enacting 8 U.S.C. 219, 18 U.S.C. 2332d, and 18 U.S.C. 2339B), and the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901-1908, 8 U.S.C. 1182. All U.S. citizens and permanent residents, companies located in the U.S., overseas branches of U.S. companies and, in the case of the Cuba and North Korea programs, overseas subsidiaries of U.S. companies, come under OFAC jurisdiction. All U.S. insurance companies, and U.S. citizens and permanent resident aliens who are employees, officers, or directors of U.S. or foreign insurance companies need to be aware that they may be held accountable for sanctions violations. Depending on the program involved, criminal violations of the statutes administered by OFAC can result in corporate and personal fines of up to \$1 million and 12 years in jail. OFAC also has authority to impose civil penalties of up to \$1,075,000, depending on the sanctions program.

OFAC does issue licenses for certain types of transactions, such as the sale of food or medicine to targeted countries. As a general rule, U.S. insurers are authorized to insure licensed shipments, but should request a copy of the shipper's OFAC license prior to agreeing to any transaction.

Specially Designated Nationals

U.S. sanctions go beyond the borders of target countries. OFAC has identified and named numerous foreign agents and front organizations, as well as terrorists, terrorist organizations, and narcotics traffickers, as "Specially Designated Nationals

and Blocked Persons," with a master list containing over 5,000 variations on names of individuals, governmental entities, companies and merchant vessels located around the world. To assure that illicit transactions involving target countries and Specially Designated Nationals are not processed, funds transfer departments in most U.S. banks as well as major corporations which are not banks have turned to sophisticated "interdict" software to automatically flag questionable transactions for review. Some of the filters contain every name on OFAC's list along with geographical names for embargoed countries and cities.

Blocked Persons and Contracts

U.S. underwriters, brokers, agents, primary insurers, and reinsurers and U.S. citizen employees of foreign firms in the insurance industry are prohibited from engaging in transactions not licensed by OFAC that in any way involve:

- Individuals, entities, or vessels appearing on OFAC's Specially Designated Nationals and Blocked Persons list;
- Governmental entities and officials of Sudan or Cuba;
- Companies located in Cuba;
- Companies, wherever located, organized in or controlled from Cuba;
- Individuals, regardless of citizenship, currently residing in Cuba;*
- Cuban citizens, wherever located (except those legally residing in the United States, or unblocked by OFAC license).*

All property, including insurance contracts, in which there is a direct or indirect interest of any of the above is considered blocked or "frozen." Premium payments, policy loan interest payments, and repayments of policy loans related to blocked insurance contracts must be credited to an interest bearing blocked account established on the books of a U.S. financial institution. Proceeds due under blocked policies may not be set-off against past due policy receivables or other claims and must also be paid into an interest bearing blocked account. Rights in blocked policies may not be transferred without authorization from OFAC—changing a beneficiary or assigning or pledging an insured's interest under a blocked policy would be considered illegal transfers involving blocked property under OFAC jurisdiction.

Blocked policies and policy payments must be reported within 10 days to OFAC's Compliance Programs Division by fax at 202/622-2426.

The following are examples of insurance transactions which would be prohibited or blocked because of the interest of a blocked person:

- A health insurance policy issued to a citizen of Cuba;
- A life insurance policy naming a resident of Havana, Cuba as beneficiary;
- An aviation policy, issued to a non-blocked foreign airline, which names the Bank of Khartoum, a Specially Designated National of Sudan, as an additional insured because the bank holds a mortgage on the aircraft;
- A marine hull policy covering potential damage to the Pinecone, a Cypriot-flag merchant vessel which has been named as a Specially Designated National of Cuba;
- A cargo policy in which Valleta Shipping Corp. of Panama, a Specially Designated National of Cuba, is a named insured;

- A liability policy covering the pharmaceutical operations of Laboratorios Blanco Pharma S.A. of Bogota, Colombia, which has been named as a Specially Designated Narcotics Trafficker;
- A reinsurance contract for policies underwritten in whole or in part by Banco Nacional de Cuba, a Specially Designated National of Cuba;
- Return of a premium overpayment to a Cuban resident in France.

* Note: Provided that any proceeds and other payments to blocked persons are paid into blocked accounts, insurance firms are authorized by general license (1) to continue to receive premiums and interest on policy loans with respect to blocked life insurance policies issued to Cuban nationals prior to sanctions, (2) to issue, service and transfer blocked life insurance policies covering the following categories of persons residing in Cuba: members of the U.S. armed forces; persons accompanying U.S. armed forces, including personnel of the American Red Cross and similar organizations; officers and employees of the U.S. government, and (3) to issue, service and transfer blocked life insurance policies in which the only blocked interest (other than that of a person described in (2) above), is that of a Cuban beneficiary. These transactions are more specifically described in OFAC regulations, which should be reviewed prior to entering into any of these transactions. Specific licenses may be issued on a case by case basis to authorize payment of proceeds on blocked life insurance policies issued on the life of a Cuban national where an unblocked beneficiary can meet certain tests and documentation requirements.

Illegal Facilitation and Other Prohibited Services

Whether or not a blocked person is involved, U.S. persons may not be involved in insurance transactions that would in any way facilitate:

- Unlicensed imports and exports of goods and services to and from, and commercial activity in Iran, Sudan, and Cuba;
- Unlicensed shipments of Iranian, Sudanese, or Cuban origin goods;
- Imports of uncertified diamonds; or any imports of diamonds from Liberia;
- Imports of goods, technology, or services produced or provided by foreign persons designated by the Secretary of State who promote proliferation of weapons of mass destruction.

The following are examples of insurance transactions that, while not necessarily blocked, would violate U.S. sanctions law because they would involve the provision of prohibited services:

- A property insurance policy written for an international hotel chain which covers hotels in Tehran, Iran;
- A marine cargo or “goods in transit” policy insuring a shipment of Iranian crude oil shipped from Egyptian ports to a Spanish buyer;
- An aviation liability policy known to cover scheduled stops in Havana, Cuba by a foreign air carrier;

Although no blocking provisions apply with regard to Iranian policies, exports of services to Iran are prohibited. Thus, firms may not issue or service policies benefiting the Government of Iran, or individuals or entities located in Iran. At the request of policy holders, U.S. firms may close out Iranian policies by effecting a one-time lump sum transfer of accumulated dividends, cash surrender values, etc. to account holders at non-U.S. banks.

Insurance companies should not engage in transactions with respect to an existing policy which has been discovered to cover or facilitate an unlicensed prohibited commercial activity or otherwise constitute an illegal export of a service, whether

or not the policy involves a blocked property interest. In no case should a U.S. insurance company pay a claim under or otherwise service such a violative policy without first contacting OFAC for a specific license, which may or may not be granted depending on the circumstances.

It should also be noted that the Terrorism List Governments Sanctions Regulations which implement section 321 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. 104-132, prohibit U.S. persons from receiving unlicensed donations in the form of gifts or charitable contributions from the governments of Syria or North Korea and from receiving a transfer from them with respect to which the U.S. person knows or has reasonable cause to believe that the transfer poses a risk of furthering terrorist acts in the United States.

Limit Your Exposure!

Before committing your company to insurance risk, examine applications, proposals, slips and any other documents available from prospective clients and their brokers for clues of possible sanctions exposure. Are any parties involved in the contract (named insureds, underwriters, brokers, etc.) currently considered “Blocked Persons?” If so, and you have not yet been given a payment, decline the business. If you have already received a payment, you must block it. Could potential losses involve property located in, goods originating from or destined for, or persons or commercial activity in target countries? Again, decline the business or structure the policy to exclude risks within the geographical limits of embargoed countries and losses related to prohibited business involving those countries. Make sure your foreign associates fully understand the restrictions under which you, as a U.S. person, must operate. U.S. underwriters should communicate their sanctions constraints to the foreign brokers with whom they regularly deal. Before entering into a syndicate or pooling arrangement, make it clear to the foreign members that you will not be able to participate in risks that would expose your firm to sanctions violations. Let international clients know that they must seek coverage elsewhere with regard to “sanctions-sensitive” items and factor the possibility of sanctions into your international political risk analyses.

Reinsurance Issues

U.S. underwriters in the international reinsurance market face greater compliance challenges as they enter into complex arrangements which may place them contractual layers away from primary insurance contracts. Again, good communication is critical. Make sure that ceding insurers and their brokers understand your responsibilities with respect to U.S. sanctions law.

When approached with a facultative reinsurance placement, which would cover a specific risk under an individual policy, U.S. reinsurers should scrutinize slips and proposals as they would a primary insurance placement and decline business inconsistent with U.S. sanctions law.

Even greater caution should be exercised before entering into a reinsurance treaty, under which a U.S. reinsurer agrees to automatically cover a predetermined portion of all risks written by the ceding insurer that would satisfy a treaty’s broad terms. If such treaties do not include appropriate geographical limit clauses and other exclusions that would isolate the reinsurer from obligations that would violate U.S. sanctions law, in the absence of an OFAC license, the insurer could be subject to penalties.

Banking Issues

Even though a policy may have passed scrutiny for possible OFAC blocked interests or OFAC violations, insurance companies should not forward premiums or claims settlements to accounts at foreign banks without first checking the bank’s name against OFAC’s Specially Designated Nationals and Blocked Persons list. Consider this — a funds transfer initiated by a U.S. insurance company in favor of an unblocked foreign broker’s account at the Bank of Khartoum, for example, would likely be frozen before it leaves the U.S. banking system; the funds may not be returned and the U.S. insurance company could be liable for civil penalties for

having merely initiated the transfer in favor of a bank which has been identified as a Specially Designated National of Sudan.

Ongoing Compliance

It may be helpful for your firm to designate a "Compliance Officer" responsible for monitoring compliance with OFAC programs. Internal auditing departments can assist in the development of a corporate compliance policy and verification that procedures, once established, are being followed. An effective internal communication network is critical for regulatory compliance. Firms might consider including regulatory notices and explanations in staff newsletters. Compliance training programs will help prevent violations. Other useful measures would include reviewing regulations in staff meetings, incorporating compliance requirements into operating procedures, and sponsoring industry compliance seminars.

The economic sanctions programs of the U.S. Government are powerful foreign policy tools. Their success requires the active participation and support of every U.S. citizen. Protect your firm's bottom line from civil penalties and its reputation from the damage that could result from unpaid claims on a blocked or violative insurance contract—don't open your doors to OFAC targets; stay abreast of U.S. sanctions law. When in doubt about a specific insurance proposal or existing policy, or when in need of additional information, contact OFAC's Compliance Division at 202-622-2490. OFAC also has a Miami branch office (909 Southeast First Avenue, Suite 735A) with a special bi-lingual hotline relating to information on the Cuban embargo; that hotline number is 305/810-5170.

Staying Up-to-Date

Whenever there is an update to any OFAC regulation, an addition or removal of an SDN, or any other announcement from OFAC, the information is quickly made available electronically via many different sources:

All of OFAC's program "brochures," as well as SDN information, are available free in downloadable camera-ready Adobe Acrobat® ".PDF" format over the Treasury Department's World Wide Web Server. OFAC's Home Page site is <http://www.treas.gov/ofac>. The Page also contains a self-extracting ASCII file of the SDN list in DOS, delimited, fixed-field, and country-specific versions, and access to all OFAC-related Executive Orders, U.N. Resolutions, statutes, regulations, and the *Code of Federal Regulations* as well as to brochures in ASCII format. All of OFAC's "forms," including its Annual Report on Blocked Property, Cuban Remittance Affidavit, and license application are electronically available on the site. Whenever there is a change involving urgent information requiring immediate implementation, the [DATE] changes on the face of the primary Page; users can automate their compliance by structuring their Internet connection to use a Web browser to watch for that date change, check a "Bulletin" file to get the details about changes, and download OFAC's latest information for incorporation, for example, into interdiction software. There is also a separate date-indicator for OFAC's SDN list. OFAC has a secondary Page on the site (at <http://www.treas.gov/ofac/policy.html>) entitled "Recent OFAC Actions of

Interest" which contains a separate "What's New" file with its own date. Those not directly involved in operations areas can automate their ability to keep current with OFAC's general information by structuring their Internet connection to use their Web browser to watch for that date change on the secondary Page, check the "What's New" file to get the details about changes, and download OFAC's latest information. There may be times when the date on the secondary Page will be later than the date on the primary Page because some OFAC "Actions of Interest" may not rise to the level of an urgent bulletin. There are also two separate email subscription services on the site, one called a "Financial Operations Bulletin" and the other a "What's New" notice. Financial operations bulletins are geared toward the financial operations community, while "What's New" notices are geared toward the general public (including exporters and importers, practicing attorneys, and researchers). Generally speaking, those in the operations areas of banks, brokerage houses, and other financial service providers do not require the level of detail and wealth of information provided in notices to the general public. Instead, they are primarily interested in changes directly impacting their day-to-day operations, such as updates to OFAC's listing Specially Designated Nationals and Blocked Persons. All "What's New" notices to the general public also contain information from OFAC's financial operations bulletins. It is not unusual for the date listed for a What's New notice to be later than the date listed for the latest Financial Operations Bulletin.

OFAC operates a free automated fax-on-demand service, which can be accessed 24 hours a day, seven days a week, by dialing 202/622-0077 from any touchtone phone and following voice prompts. OFAC documents kept up to date on the system include program and general brochures, listings of Specially Designated Nationals and Blocked Persons, including changes to the listings, licensing guidelines, and *Federal Register* notices (even those filed but not yet printed in the *Federal Register*). The "Index of Available Documents" is date-specific.

The free *Federal Bulletin Board* of the U.S. Government Printing Office, which is linked to the *Federal Register* and *Code of Federal Regulations*, carries all OFAC brochures in ASCII and Adobe/Acrobat® ".PDF" format, as well as the entire *Code of Federal Regulations* containing OFAC regulations, all *Federal Register* notices that OFAC puts out, and OFAC's extended electronic reading room. For information on the *Federal Bulletin Board* call 202/512-1530 or dial 202/512-1387 to connect. The information is also available over the Internet via GPO ACCESS at fedbbs.access.gpo.gov.

The U.S. Maritime Administration's Web site at <http://marad.dot.gov> contains a special link to OFAC's brochures and information, including a flashing indicator of late-breaking updates. The U.S. Customs Service also maintains a free *Customs Electronic Bulletin Board* geared especially toward Customs House Brokers (OFAC's information is available as a date-specific self-extracting DOS file, "OFAC*.EE" under "Files," then "Customs Extra!," via the Internet at <http://209.122.8.97> or "cebb.customs.treas.gov"). Numerous other industry groups link to OFAC's website, among them: the International Financial Services Association (<http://www.intlbanking.org>), the International Banking Operations Association (<http://www.iboa.com>), the National Association of Securities Dealers (<http://www.nasdr.com>), the Securities and Exchange Commission (<http://www.sec.gov>), the Securities Industry Association (<http://www.sia.com>), the American Society of Travel Agents (<http://www.astanet.com>), the Institute of Real Estate Management (<http://www.irem.org>), and the Commercial Investment Real Estate Institute (<http://www.cre.org>).

• **Questions frequently asked by the Insurance Industry:**

The Office of Foreign Assets Control (OFAC) has undertaken an initiative to post on its website answers to questions of general applicability frequently asked by the public. The initiative is intended to be part of OFAC's commitment to regulatory transparency and customer service. OFAC is continuing to prepare answers to additional questions that are often asked and additional questions and answers will be posted periodically. Comments are welcome via the "™" link on OFAC's homepage. It should be noted, however, that OFAC is unable to treat any information submitted concerning FAQs as confidential or proprietary to the submitter and no information submitted concerning FAQs will be treated as such.

The questions and answers highlight key issues and topics relating to economic sanctions and the procedures and practices of OFAC. They are intended only as general information to assist persons subject to United States jurisdiction to comply with legal requirements and to facilitate an understanding of the scope and purposes of sanctions programs. It is very important to note that U.S. businesses, individuals, and others subject to OFAC jurisdiction must comply with the full legal requirements of OFAC's programs which are set forth in the applicable statutes, Executive Orders, and implementing regulations found in Title 31 Chapter V of the Code of Federal Regulations and in Federal Register documents that update the regulations. The reader is further cautioned that specific facts may alter an analysis and, because each program reflects unique foreign policy and national security contexts, a particular answer will not always be applicable to all programs or at all times. For further assistance, call OFAC's Compliance Programs Division at 202/622-2490 or OFAC's Licensing Division at 202/622-2480 or write to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

State insurance statutes regulate an insurer's ability to withhold claim payments, cancel policies or to decline to enter into policies. In some cases, insurers must commit an ostensible violation of state insurance regulations to comply with OFAC regulations. Does OFAC have a position as to whether OFAC regulations preempt state insurance regulations in this context?

OFAC's regulations under the Trading with the Enemy Act and the International Emergency Economic Powers Act are based on Presidential declarations of national emergency and preempt state insurance regulations. OFAC regulations are not federal insurance regulations, they are regulations promulgated under the President's exercise of foreign-affairs and national emergency powers.

At what point must an insurer check to determine whether an applicant for a policy is an SDN?

If you receive an application from an SDN for a policy, you are under an obligation not to issue the policy. Remember that when you are insuring someone, you are providing a service to that person. You are not allowed to provide any services to an SDN. If the SDN sends a deposit along with the application, you must block the payment.

What should an insurer do if it discovers that a policyholder is or becomes an SDN—cancel the policy, void the policy ab initio, non-renew the policy, refuse to pay claims under the policy? Should the claim be paid under a policy issued to an SDN if the payment is to an innocent third-party (for example, the injured party in an automobile accident)?

The first thing an insurance company should do upon discovery of such a policy is to contact OFAC Compliance. OFAC will work with you on the specifics of the case. It is possible a license could be issued to allow the receipt of premium payments to keep the policy in force. Although it is unlikely that a payment would be licensed to an SDN, it is possible that a payment would be allowed to an innocent third party. The important thing to remember is that the policy itself is a blocked contract and all dealings with it must involve OFAC.

A workers' compensation policy is with the employer, not the employee. Is it permissible for an insurer to maintain a workers compensation policy that would cover a person on the SDN List, since the insurer is not transacting business with the SDN, but only with his/her employer?

If an insurer knows that a person covered under the group policy is an SDN, that person's coverage is blocked, and if he or she makes a claim under the policy, the claim cannot be paid. If an insurer does not know the names of those covered under a group policy, it would have no reason to know it needed to block anything unless and until an SDN files a claim under that policy. At that point its blocking requirement would kick in.

How frequently is an insurer expected to scrub its databases for OFAC compliance?

That is up to your firm and your regulator. Remember that a critical aspect of the designation of an SDN is that the SDN's assets must be frozen immediately, before they can be removed from U.S. jurisdiction. If a firm only scrubs its database quarterly, it could be 3 months too late in freezing targeted assets. The SDN list may be updated as frequently as a few times a week or as rarely as once in six months. See OFAC's website for suggestions on how to keep current.

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