

**Worldwide Coverage:
International Aviation Operations
and Insurance in 2017**


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Disclaimer

These power point slides are solely for the purpose of general discussion based on the presenters' experiences in the area of aviation underwriting and claims. They do not constitute legal advice nor are they intended to represent the views or positions of USAIG, AIA or the individual panelists, and shall not be used for such purposes. Any policy provisions or claims scenarios discussed in the slides are solely exemplars, and not actually those of USAIG or any specific insurer or insured.



**International Aviation Coverage –
The Main Issues**



The Main Issues – Roadmap

- Worldwide Coverage, Generally
- Country Specific Insurance Requirements
- OFAC – Restrictions and Requirements
- Cuba




Worldwide Coverage, Generally



Broad Coverage Territories - Exemplars


- “Coverage territory” means “anywhere in the world” or “is worldwide.”
- “This policy applies only to bodily injury, property damage or physical damage sustained during the policy period and while the aircraft is [anywhere in the world].”



LSW 617 H – KILN Geographic Area Exclusion Clause (09/07/15)

1. Notwithstanding any provisions to the contrary and subject to clauses 2 and 3 below, this Policy excludes any loss, damage or expense howsoever occurring within the geographical limits of any of the following countries and regions:

- (a) Algeria, Burundi, Far North Region of Cameroon, Central African Republic, Democratic Republic of Congo, Ethiopia, Mali, Mauritania, Nigeria, Somalia, The Republic of Sudan, South Sudan.
- (b) Colombia, Peru.
- (c) Afghanistan, Jammu & Kashmir, North Korea, Pakistan.
- (d) Abkhazia, Donetsk & Lugansk regions of Ukraine, Nagorno-Karabakh, North Caucasian Federal District, South Ossetia
- (e) Iran, Iraq, Lebanon, Libya, North Sinai Province of Egypt (including Taba International Airport), Syria, Yemen.
- (f) Any country where the operation of the insured Aircraft is in breach of United Nations sanctions.




LSW 617 H – KILN Geographic Area Exclusion Clause (09/07/15)

2. However coverage pursuant to this Policy is granted:

- (a) for the over flight of any excluded country where the flight is within an internationally recognized air corridor and is performed in accordance with I.C.A.O. recommendations; or
- (b) in circumstances where an insured Aircraft has landed in an excluded country as a direct consequence and exclusively as a result of force majeure.

3. Any excluded country may be covered by underwriters at terms to be agreed by the Slip Leader only prior to flight.



By Region of the World

- **North Africa**
 - Algeria, Burundi, Far North Region of Cameroon, Central African Republic, Democratic Republic of Congo, Ethiopia, Mali, Mauritania, Somalia, The Republic of Sudan, South Sudan
- **South America**
 - Colombia, Ecuador, Peru
- **South & Central Asia**
 - Afghanistan, Jammu & Kashmir, Myanmar, North Korea, Pakistan
- **Russia**
 - Abkhazia, Donetsk & Lugansk Regions of Ukraine, Georgia, Nagorno-Karabakh, North Caucasian Federal District, South Ossetia
- **Middle East**
 - Iran, Iraq, Lebanon, North Sinai Province of Egypt (including Taba International Airport), Syria, Yemen









European Unions Limits Chart

Category	EU Maximum Takeoff Weight (Kilograms)	EU Minimum Insurance (SDRs*)	EU Minimum Insurance (USD)
1	<500	750,000	1,015,967
2	<1,000	1,500,000	2,031,934
3	<2,700	3,000,000	4,063,868
4	<6,000	7,000,000	9,482,358
5	<12,000	18,000,000	24,383,206
6	<25,000	80,000,000	108,369,807
7	<50,000	150,000,000	203,193,387
8	<200,000	300,000,000	406,386,775
9	<500,000	500,000,000	677,311,291
10	>500,000	700,000,000	948,235,807

*1 SDR = .738213 USD (on 04/11/17)



Special Form, Wording or Liability Limit Requirements

	Special Form or Special Wording Requirements	Minimum Liability Insurance Requirements
Australia	✓	
Brazil	✓	
Canada		✓
Colombia	✓	
Costa Rica	✓	
Guam	✓	
Germany	✓	✓
Hong Kong	✓	
Italy	✓	✓
Jamaica		✓
Mexico	✓	✓
Switzerland	✓	✓
Turkey	✓	✓
UAE	✓	✓
Venezuela	✓	✓

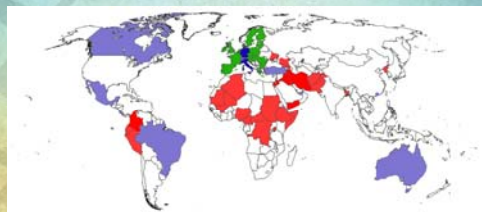
Special Wording / Limits Countries



Countries that Require Certificates



IN SUMMARY









OFAC – Overview of Programs

- Counter Narcotics Trafficking Sanctions
- Counter Terrorism Sanctions
- Rough Diamond Trade Controls
- Transnational Criminal Organizations
- Cuba, Iran, North Korea, Syria, Ukraine-/Russia-Related
- Over 25 Sanctions Programs
- Many comprised of multiple federal laws



OFAC – Different Types of Programs

- Comprehensive Country
 - Cuba, North Korea, Iran, Sudan (formerly)
- Limited Country (Often Regime-Based)
 - North Korea (formerly), Russia/Ukraine, Syria (close)
- Specially Designated Nationals and Blocked Persons List
 - Approximately 5,500 names, 1,000+ pages
 - All transactions are prohibited and assets “blocked”



OFAC – Key Sanctions Programs

- Cuban Assets Control Regulations, 31 C.F.R. 515
 - Some of the most restrictive U.S. sanctions ever.
 - Beginning in 1/2015, the sanctions have been relaxed via a series of revisions to the CACR and the BIS EAR.
- Iranian Transactions Regulations, 31 C.F.R. 560, E.O. 13599, etc.
 - All trade and services prohibited; property and interests of Iranian Government/financial institutions blocked, etc.
 - 1/16/2016: JCPOA and SLP regarding commercial aircraft.




OFAC – Key Sanctions Programs

- North Korea Sanctions Regulations, 31. C.F.R. 510, E.O. 13687, E.O. 13722, etc.
 - All trade and services prohibited; property and interests of North Korean Government blocked, etc.
 - Sanctions becoming more restrictive.
- Syrian Sanctions Regulations, 31 C.F.R. 542
- The Sudan Example



OFAC and BIS

- U.S. Department of Commerce, Bureau of Industry and Security
- “Responsible for developing export control policies, issuing export licenses, and prosecuting violations.”
- 15 C.F.R. 740.15 – Temporary sojourn of aircraft



OFAC Application Issues

- Often, strict liability ...
- General and specific licenses (see SLPs)
- “U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches ...”




Implementation of OFAC Sanctions

- OFAC looks to U.S. Persons for implementation
- Insurers
 - “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.”
 - *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003)




OFAC and Insurance – Who?

- Who must comply? Remember, U.S. Persons!
 - OFAC: “U.S. underwriters, brokers, agents, primary insurers and reinsurers and U.S. citizen employees of foreign firms.”
 - Employees of the above.
 - Also, TPAs, reinsurance intermediaries, overseas branches of U.S. companies.
 - Any individuals or companies within the U.S.
 - Overseas subsidiaries of U.S. companies – CACR, etc.




OFAC and Insurance - Challenges

- Exposures are indirect, violations unintentional.
- SDNs/OFAC Targets involved in transactions as policyholders, Als, payees, payers, lienholders, beneficiaries, TPAs, brokers, co-insurers, reinsurers, claimants, routing /depositing banks, etc.
- Aviation policies, multi-national risks and insureds, etc.




OFAC and Insurance - Blocking

- Blocked Transactions and Blocking
 - Before (Decline and Report) vs. After (Freeze and Report)
 - **Policies are property!** Premiums, policy loan repayments and interest payments, claims – interest bearing blocked account.
 - Blocked Policies – everything must involve OFAC; changing beneficiaries or transferring rights is illegal.
 - Who is “blocked?” SDNs, then see programs.
- Prohibited Transactions and Rejecting




Blocked/Prohibited Insurance Transactions – OFAC Examples

- Aviation policy, issued to non-blocked foreign airline, naming bank listed as SDN of Sudan as AI because it holds mortgage on aircraft.
- Marine hull policy covering damage to a merchant vessel that has been named an SDN of Cuba.
- Cargo policy in which an SDN of Cuba is a named insured.
- Liability policy covering pharmaceutical operations of an entity named as an SDN Narcotics Trafficker.



Blocked/Prohibited Insurance Transactions – OFAC Examples

- Reinsurance contract for policies underwritten in whole or in part by SDN of Cuba.
- A health insurance policy issued to a citizen of Cuba.
- Return of a premium overpayment to a Cuban resident in France.



OFAC and Insurance – Facilitation and Rejection

- Even if no “blocked” person at issue, OFAC indicates that certain insurance transactions should be rejected:
 - Property insurance policy for an international hotel chain which covers hotels in Tehran, Iran.
 - Marine cargo policy insuring shipment of Iranian crude oil from Egyptian port to Spanish buyer.
 - Aviation liability policy covering scheduled stops in Havana, Cuba by a foreign carrier.



Tips on Compliance from OFAC

- Compliance program
 - Compliance Officer
 - Auditing department assistance
 - Internal communication network
 - Regulatory notices and explanations in staff newsletters
 - Training
 - Incorporating compliance into operating procedures
 - Sponsoring industry compliance seminars



Tips on Compliance from OFAC

- Before committing to risk, examine applications, proposals, slips and all documents available from clients and brokers.
- Frequent and continued scrubbing of databases and policies; suggests quarterly and pre-policy scrubbing only is insufficient.
- Interdiction software.
- Ensure foreign associates, brokers, clients and syndicate/pool members know constraints.



Compliance – Connecting the Dots

- **SDN/Target Screening** – Receipt of applications; policy issuance and renewal; addition and modification of AIs, payees, lienholders and beneficiaries; receipt and return of premiums; receipt, payment and adjustment of claims (payees, banks); entering into broker, TPA, vendor, reinsurance, co-insurance and syndicate/pooling arrangements, etc.
- Analysis of name, country, address, connections, etc.
- Subsequent scrubbing



OFAC Tips – Exclusions and Licenses

- Insert in global insurance policies an exclusion for risks that would violate sanctions law.
- “Whenever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions, such coverage shall be null and void.”
- Shift risk of loss to insured, more likely to have control.
- If not commercially feasible, apply for a specific license.



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U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site - <http://www.treas.gov/ofac>

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

Sanctions and Embargo Clause


Notwithstanding anything to the contrary in the Policy the following shall apply:

1. If, by virtue of any law or regulation which is applicable to an Insurer at the inception of this Policy or becomes applicable at any time thereafter, providing coverage to the Insured is or would be unlawful because it breaches an embargo or sanction, that Insurer shall provide no coverage and have no liability whatsoever nor provide any defence to the Insured or make any payment of defence costs or provide any form of security on behalf of the Insured, to the extent that it would be in breach of such law or regulation.
2. In circumstances where it is lawful for an Insurer to provide coverage under the Policy, but the payment of a valid and otherwise collectable claim may breach an embargo or sanction, then the Insurer will take all reasonable measures to obtain the necessary authorisation to make such payment.
3. In the event of any law or regulation becoming applicable during the Policy period which will restrict the ability of an Insurer to provide coverage as specified in paragraph 1, then both the Insured and the Insurer shall have the right to cancel its participation on this Policy in accordance with the laws and regulations applicable to the Policy provided that in respect of cancellation by the Insurer a minimum of 30 days notice in writing be given. In the event of cancellation by either the Insured or the Insurer, the Insurer shall retain the pro rata proportion of the premium for the period that the Policy has been in force. However, in the event that the incurred claims at the effective date of cancellation exceed the earned or pro rata premium (as applicable) due to the Insurer, and in the absence of a more specific provision in the Policy relating to the return of premium, any return premium shall be subject to mutual agreement. Notice of cancellation by the Insurer shall be effective even though the Insurer makes no payment or tender of return premium.

AVN 111 01.10.10


OFAC and Insurance –Coverage Territory

- Geographical Limits: At and from ports and/or places in the World to all ports and/or places in the World excluding Russia, Iraq, Liberia, Libya, Jordan, CIS countries, El Salvador and Government regulated countries including US trade restrictions and/or sanctions under OFAC rules ...
- Coverage Territory Condition



Common “Policy Territory” Provision

“This policy applies to occurrences and groundings anywhere, but if claim is made or suit is brought elsewhere than within the United States of America ... or Canada, the Company shall have the right but not the duty to investigate and settle such claims and to defend such suits. In any case in which the Company elects not to investigate, settle or defend, the Insured ... will make or cause to be made such investigation and defense as is reasonable and necessary, and subject to prior authorization ... will effect ... such settlements as the Company deems prudent.”



OFAC and Reinsurance

- Per OFAC, international reinsurers face greater compliance challenges – complex arrangements that place them contractual layers away from primary insurance contracts.
 - Communication – ceding insurers/brokers must know limits.
 - Facultative placements – scrutinize slips and proposals as if primary placements.
 - Treaties – greater caution! Geographical limitation clauses and exclusions ... if not, potential violations absent license.




OFAC and Brokers

- OFAC – “Services” can include brokering insurance or reinsurance policies (SDNs, Cuba, Iran, North Korea, etc.).
- Recall “facilitation”: non-U.S. services can be at play.
- Again, a wide net ... SDN/Target does not need to be broker’s client or direct contact for a violation to occur (Als, beneficiaries, payees, lienholders, partners, etc.).
 - E.g., U.S. company brokering policy covering German construction company’s worldwide operations including operations in Iran via French insurer.




OFAC and Brokers

- Cannot rely on insurer’s compliance.
- SDN/Target after the fact ... broker’s continued exposure depends on continued involvement or servicing of transaction.
- Exclusion clause in brokering agreements and policies.
- Even if transaction properly rejected, referral can be an issue.



OFAC Enforcement

- Interest in the insurance industry ...
- No action, cautionary letter, finding of violation, civil penalty, criminal referral.
- Factors – willfulness of violation, awareness of conduct, harm to sanctions program objectives, the existence of a compliance program, remedial actions taken and cooperation with OFAC. Also, self-reporting!
- Penalty calculation – transaction value(s) -> base amount -> +/- factors.




OFAC Enforcement Examples

- Insurer fined \$38,448 for participating on hull portion of aviation policy placed by a foreign broker insuring a foreign-owned commercial airline that leased aircraft to an Iranian air charter company.
 - Premium: \$113,921
 - Non-egregious
 - Voluntary self-disclosure




OFAC Enforcement Examples

- Insurer cited for facilitating and/or processing payments and maintaining two health insurance policies in which SDNs had an interest. Policies were issued in 1992; policyholders became SDNs in 2009, and new TPA discovered issue in 2011.
 - Finding of Violation: large and sophisticated; numerous payments; harm to program; programs inadequate.
 - No monetary penalty: no personnel had actual knowledge; no similar notices in previous five years; cooperation.



OFAC Enforcement Examples

- New York insurer paid \$271,815 for 48 apparent OFAC violations re: issuing global P & I policies to North Korean-flagged vessels and providing coverage involving Iran, Sudan or Cuba.
 - 24 P & I policies for North Korean Vessels; \$1,142,237 in premium; 7 claim payments for \$12,236.
 - 11 claim payments for \$72,962 involving Iran; 5 claim payments for \$260,912 involving Sudan; 1 claim payment of \$21,736 involving Cuban national.
 - Base penalty amount: \$755,042.



Cuba



OFAC, BIS and Cuba – The Underlying Sanctions Program

- CACR (31 C.F.R 515) and BIS EARs (15 C.F.R. 730-774)
 - ALL transactions prohibited with: governmental entities and officials of Cuba; companies located in Cuba; companies, wherever located, organized in or controlled from Cuba ; individuals, regardless of citizenship, residing in Cuba, and Cuban citizens, wherever located.**
 - All property of the above "blocked."
 - Sanctions apply to foreign subsidiaries of U.S. companies.
 - Trade embargo



OFAC and Cuba – CACR Revisions

- Beginning in 2015, several rounds of carve-outs to sanctions to “engage and empower the Cuban people.”
 - General license for 12 categories of authorized travel e.g., educational activities (**people-to-people**), professional meetings/research, humanitarian activities, family visits, etc.
 - “Full-time schedule” and NO TOURISM!
 - 2/16/16 MOU
 - Spending, personal use imports in baggage (10/16), other easing.



OFAC and Cuba – Civil Aviation

- No OFAC specific license required to provide aircraft carrier services for authorized travel.
 - Required verification and record-keeping (5 yrs.).
 - Generally, no more requirement for Part 135 CSPs or Part 91 specific licenses every time.
 - Now, any airport in the U.S.
 - Yes via third countries but only authorized travel and remember MOU.
 - Other Cuban and U.S. licenses/paperwork required.




BIS and Cuba – Civil Aviation

- Temporary sojourn of aircraft – general license exception for authorized civil aircraft operations (including GA) if criteria met.
 - Pilots/crew now permitted to remain (1/27/16).
 - Equipment/spare parts for permanent use necessary for operation.
- Policy of approval (specific licenses) for exports to ensure civil aviation safety and safe operation of international commercial aircraft (1/27/16).




OFAC and Cuba - Insurance

- May U.S. persons provide insurance-related services (such as cargo or hull insurance, or reinsurance) to U.S. persons engaging in authorized activity in Cuba?
 - “Where the provision of insurance-related services is directly incident to activity authorized by general or specific license, then the provision of such services is authorized as well.”
 - § 515.533 of the CACR: authorizes transactions ordinarily incident to the licensed/authorized (BIS) exportation or re-exportation of goods to Cuba.



OFAC and Cuba - Insurance

- Does a person subject to U.S. jurisdiction require an OFAC specific license to pay an insurance claim that arises from authorized activity in Cuba if the payment involves a Cuban national?
 - “Where the provision of insurance-related services is authorized by general license, either expressly or as a transaction ordinarily incident to a licensed transaction, **this authorization extends to the payment or settlement of claims**, including to a Cuban national.”



OFAC and Cuba – Insurance

- OFAC says yes:
 - Travel insurance to authorized U.S. persons.
 - Issue policies/pay claims re: group health, life and travel insurance on behalf of third-country nationals traveling to Cuba, as long as not specific to Cuba.
- OFAC says no:
 - Policies/claims/reinsurance to non-U.S. persons (e.g., foreign airlines) facilitating travel by third-country nationals from third countries to Cuba.

