

## **LMA5670 – General Sanctions Financial Crime Documentation Clause – Guidance**

Sanctions legislation has become increasingly onerous on (re)insurers and brokers in terms of their obligations to provide evidence of compliance. The sanctions legislation or regulations are often introduced at short notice and (re)insurance contracts therefore need to cater for the possibility that documentary requirements may change mid-contract. In such case, the (re)insurer and/or the broker may not be able to request the information required by the regulators without a contractual obligation in the (re)insurance contract.

Examples have been the Russian Oil Price Cap and insurance of Russian diamonds where the documentary obligations took effect in some cases mid-contract. Recent general licences have also required (re)insurers and/or brokers to have access to documentation.

In light of these developments, the LMA has produced a clause which imposes an obligation on a (re)insured, upon a reasonable request from the (re)insurer or their brokers, to produce evidence reasonably required to satisfy them or any regulator that there is no exposure to any sanction, prohibition or restriction (reflecting the wording of LMA sanction clauses LMA3100A and 3200).

The Clause is designed with the aim of “future proofing” (re)insurance contracts so that if additional obligations arise out of sanctions legislation during the course of the (re)insurance contract, (re)insurers and brokers will be able to obtain documentation without the need to try to introduce additional clauses mid term.

This Clause has also been designed to give the broker the benefit of access to information that it may require to demonstrate compliance with sanctions legislation or regulations. Under English law as the clause is drafted, this would be a direct right as it gives the broker third party rights under the contract. Under laws in other jurisdictions, the broker may need to ask the insurer to enforce this right on their behalf.

It is anticipated that because the Clause gives (re)insurers and brokers the right to request documentation during the course of the (re)insurance contract, this may reduce the necessity for (re)insurers and brokers to request the documentation until it is necessary. This could potentially reduce the burden on (re)insureds.

The Clause is not a general Access to Records clause and is not intended to enable (re)insurers to make wide-ranging discovery requests. This is why the obligation has been circumscribed to:

- a. whatever is reasonably required to demonstrate that the (re)insured's activities subject to the coverage provided under the (re)insurance do not expose the (re)insured or the (re)insurer to any sanction, prohibition or restriction under any sanctions or financial crime laws and regulations;
- b. a requirement for the (re)insured to make best efforts; and
- c. ensuring that the (re)insured is not in breach if it cannot produce the documentation for reasons beyond its control.

“Sanctions and Financial Crime Laws and Regulations” have been limited to trade or economic sanctions, or financial crime laws, regulations, requirements, prohibitions or restrictions under United Nations' resolution(s) or the laws or regulations of the European

Union, United Kingdom or United States of America. This list of countries can be expanded if required by the (re)insurers or the brokers.

If the (re)insured does not comply with the requirements in the Clause and non-compliance is not for reasons outside their control, the (re)insurers will be irrevocably discharged of all obligations under the (re)insurance contract, including requirements to repay premium as it is deemed earned upon inception of the (re)insurance. The broker is equally not required to return brokerage in these circumstances.

Whilst at first sight, the remedy for breach of this Clause seems severe, it aligns with what was required by regulators in terms of any breach of the oil price cap documentary requirements. This remedy is also considered appropriate because for the remedy to take effect, the (re)insured will have failed to exercise best efforts to provide documentation reasonably required by the (re)insurer and/or broker with respect to compliance with sanctions legislation and regulations. Further if the failure to produce is beyond the (re)insured's control then there will be no breach.

### **Including an Obligation to Maintain Records**

The following wording has not been incorporated into this version of the Clause but (re)insurers may wish to add it to emphasise the (re)insurers reliance on the (re)insured to maintain records demonstrating that its activities do not expose the (re)insured or their (re)insurers to any sanctions, prohibition or restriction (reflecting the wordings of LMA sanctions clauses LMA3100A and 3200)

*"The (re)insured shall maintain complete and accurate records demonstrating that its activities in respect of the subject matter (re)insured by this (re)insurance do not expose the (re)insured or the (re)insurer to any sanction, prohibition or restriction under any **Sanctions and Financial Crime Laws and Regulations**; and"*

**The Clause is expected to be used in tandem with and does not replace or provide the same protection as the general sanctions clauses such as LMA 3100A or LMA 3200.**