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Sanctions and Insurance

Where are we and what to look out for?



Presented by: John Bromley



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- Sanctions in Canada come into force pursuant to one of three statutes
 - United Nations Act
 - Special Economic Measures Act
 - Export and Import Permits Act




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- The Export and Import Act by and large deals with particular goods that have restrictions or prohibitions on their import or export. The Act provides that the Government can establish control lists of products and list the countries to which restrictions apply.



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- The two statutes that are relevant to this talk are the *United Nations Act* and the *Special Economic Measures Act*.



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- The United Nations Act provides that when the UN decides on a measure, the Government may make such orders and regulations as appears to be necessary to enable the measure to be applied.
 - The penalty for a breach is a fine of up to \$100,000 or a year in prison or both.
 - Property dealt with contrary to any regulation is subject to forfeiture.
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- The regulations currently in force affect
 - Eritrea, Iran, Liberia, Libya, Somalia, North Korea, Ivory Coast, Congo, Lebanon, Iraq, Sierra Leone and the Sudan
 - There are also general regulations dealing with Al-Qaida and the Taliban and with the suppression of terrorism.



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- Al-Qaida Regulations
 - No person in Canada shall knowingly provide any funds or financial services or other services with respect to property of the Taliban (Sections 3 and 4)
 - Includes indirect control or association
 - Section 4.1 applies same prohibition to Usama bin Laden.



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- Insurance companies must determine on a continuing basis whether they are in control or possession of property of the Taliban or bin Laden (Section 5.1)



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- *Suppression of Terrorism Regulation* has the same provisions prohibiting the provision of funds to a prohibited person.
 - Prohibited persons are listed in the schedule attached to the regulation.
 - Insurance companies on a continuing basis must determine if they have property on behalf of a listed person. (Section 7)



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- The Criminal Code also requires insurance companies to report with respect to entities listed in the regulations under that act as terrorist entities – again with a good faith exemption.



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- The *Special Economic Measures Act* allows the Government to take action in support of an international organization of which Canada is a member e.g. the Commonwealth, or if it thinks that a grave breach of international peace and security has occurred and a serious international crisis has or may result.



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- It specifically allows the Government to pass regulations restricting or prohibiting activities inside or outside Canada relating, inter alia, to the import or export of any goods and the provision of any financial services (Section 4(2))



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- The regulations currently apply to
 - Burma (Myanmar), North Korea, Libya, Syria, Zimbabwe and Iran.



Special Economic Measures (Iran) Regulations

- Prohibited to provide insurance or reinsurance to a designated person
 - > As of Oct 17th, 279 companies and 47 individuals
- Prohibited to do anything that causes, assists or promotes any act or thing that is otherwise prohibited



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- Insurance companies have the same continuing duty to determine if they have possession or control of property on behalf of a designated person.



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- There is an exemption for
 - shipments of agricultural products if shipped in bulk carriers that carry only agricultural products
 - Humanitarian relief work if it complies with the regulation



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- The sanctions against Iran were extended recently to prohibit all financial transactions with Iran
 - The new sanctions do not apply to contracts entered into before November 22, 2011



Office of Foreign Asset Control

- OFAC prohibits the export directly or indirectly of goods, technology or services to designated persons including to persons in a third country if its known or there is reason to know that the ultimate destination is Iran.
- It prohibits financial dealings including insurance with designated persons.



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- The list of designated persons currently consists of 6000 names and is 518 pages long.



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- OFAC recommends insurance policies contain a clause stating:
 - *“Whenever coverage provided by this policy would be in violation of any US economic or trade sanctions, such coverage is null and void.”*



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- If such a clause is not feasible for business reasons and there is a concern then it recommends you get license to issue the policy. However you would also need another permit to pay any claim



Joint Hull Committee Clause

- *“No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or the United States of America.”*



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- *Islamic Republic of Iran Shipping Lines v. Steamship Mutual Underwriting Association (Bermuda) Limited*
 - Court held that while sanctions prevented the Club from providing its standard cover the exemption for the Treasury Department for Bunker Convention liability did not allow the Club to cancel the policy in its entirety.



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- *Arash Shipping Enterprises Company Limited v. Groupma Transport*
 - Court held that a policy with automatic renewal provisions could not be renewed as it would constitute a new contract under the EU sanctions



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- If there is a risk for which coverage is sought or a loss for which payment is sought and either may be covered by sanctions seek advice first!



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