LLOYD'S

MARKET BULLETIN

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Title	Sanctions Compliance – Due Diligence Guidance for the Lloyd's Market
Purpose	To alert Managing Agents to the existence of new Lloyd's guidance on sanctions compliance.
Type	Event
From	Andy Wragg, Senior Manager, International Regulatory Affairs 020 7327 6387/ andy.wragg@lloyds.com
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Related Links	Sanctions Due Diligence Guidance for the Lloyd's Market

Introduction

This guidance is intended for all managing agents and is also being issued to Lloyd's accredited brokers so they are aware of the information managing agents may expect to see when risks are presented to them. Its purpose is to assist managing agents in establishing due diligence procedures to comply with applicable sanctions.

The guidance has been prepared in consultation with the Lloyd's Market Association and various managing agents. In addition, parts 1 and 2 have been reviewed by HM Treasury. It is intended to be complementary to, and read in conjunction with, Market Bulletins Y4117, Y4355, Y4409, Y4463 and Y4412.

This guidance also takes into account the requirements of United Nations ("UN"), European Union ("EU") and United Kingdom ("UK") sanctions. Separate commentary on certain elements of United States sanctions is also provided in part 4 of the main guidance.

Attached to this market bulletin are 2 appendices. Appendix 1 sets out high level principles, which Lloyd's strongly encourages managing agents to assimilate into their business practices. Appendix 2 summarises key points of the main guidance document, which consists of 4 sections detailed below, each of which can be linked to below and in the high level summary:

Part 1 - Background Information regarding Sanctions and Guidance on Due Diligence and Screening Procedures of General Relevance
Part 2 - Due Diligence and Screening Considerations by Method of Acceptance
Part 3 - Miscellaneous Compliance Procedures
Part 4 - Other Sanctions Regimes and US Sanctions

What does this mean for my business?

The compliance procedures adopted by each managing agent will vary depending on their risk profile and the nature of the business they conduct. **This guidance is not prescriptive** but does set down a framework to which managing agents should refer when assessing their procedures.

Lloyd's recognises that the due diligence and screening that managing agents conduct will vary dependent on numerous factors including the class of business, method of acceptance or transaction concerned. In addition, managing agents should bear in mind that the application of sanctions is highly fact-specific and each case should be considered individually on its facts.

As a result, this guidance does not, and is not intended, to provide exhaustive or mandatory commentary on the procedures that should be adopted in any individual case. Lloyd's strongly recommends that managing agents determine the due diligence that they conduct on a case-by-case basis, taking legal advice where appropriate. This guidance should not be treated as bespoke legal advice and/or a "safe harbour" for sanctions compliance.

Lloyd's does expect all managing agents to implement and maintain reasonable and proportionate sanctions due diligence compliance processes and procedures that manage the risk of them participating in activities which would infringe applicable sanctions. Managing agent's existing sanctions compliance policies should be benchmarked against the considerations set out in the guidance and where there are no formal policies or procedures, their implementation should be considered.

Lloyd's expects managing agents to keep these processes and procedures properly documented, under review and endorsed by senior management. Managing agents are expected to ensure that all staff (and those acting on behalf of managing agents) fully understand how to comply with them.

When setting and operating these procedures, managing agents should bear in mind that a breach of sanctions can create both civil and criminal liability. As such, any infringement could expose them to the risk of prosecution. **Managing agents should never engage or continue to participate in activities which they know or have reasonable cause to suspect infringe sanctions**.

If further information on this subject is required, please contact:

Andy Wragg at andy.wragg@lloyds.com or on 020 7327 6387;
Steve Payne at stephen.payne@lloyds.com or on 020 7327 6538;
Rachael Penny at rachael.penny@lloyds.com or on 020 7327 6380; or
Lloyd's International Trading Advice at lita@lloyds.com or on 020 7327 6677.

APPENDIX 1

GENERAL PRINCIPLES OF SANCTIONS DUE DILIGENCE AND SCREENING

INTRODUCTION

When considering and establishing procedures to comply with sanctions, Lloyd's strongly encourages managing agents to assimilate the following principles into their business practices.

THE GENERAL PRINCIPLES

1. **Compliance Procedures** - Managing agents must determine their own processes and procedures, taking into account the law, regulatory requirements and the guidance contained in this Guidance (and others). There is no prescribed form or manner in which due diligence and screening should be carried out by managing agents to ensure compliance with sanctions law.

2. **Due Diligence and Screening** - Managing agents should ensure that they operate (or procure the operation of) due diligence and screening processes and controls, which ensure the performance of reasonable and proportionate due diligence and screening on all business that they underwrite (including without limitation all amendments, extensions or renewals of the same), all payments and financial transactions they make and all other non-underwriting activities (for example, investment service activities) in which they engage.

3. **Timing and Proportionality** - Due diligence and screening is reasonable and proportionate when it is commensurate to the nature of the transaction or activity concerned and the likelihood that it may otherwise give rise to an infringement of sanctions. Similar principles should be applied to the timing of due diligence. It may be necessary for managing agents to conduct due diligence and screening on (re)insurance contracts and/or on their other business activities on more than one occasion (or on an ongoing basis).

4. **Training** - Managing agents should ensure that their staff are trained on the due diligence and screening measures the managing agent is taking to ensure sanctions compliance.

5. **Outsourcing and Delegation** - Where managing agents rely on the activities or services of third parties to perform sanctions due diligence and screening on their behalf, they should ensure that this is reflected in full detail in the contractual arrangements with those parties and ensure that the third party performs and is accountable for those activities and services to a high standard and no less a standard than would have been undertaken by the managing agent itself.

6. **Sanctions Exclusions** - Managing agents are encouraged to use sanctions exclusion clauses and warranties where appropriate, however these should not be considered to be a substitute for due diligence and screening.

7. **Licensing Authorities** - If managing agents are in doubt as to whether sanctions apply to the activities in which they propose to engage, they should consider whether to approach the appropriate licensing authority (for example, HM Treasury, or the Export Control Organisation (BIS), etc) in advance for guidance or for a licence to proceed with their

activity. Managing agents should also consider whether to approach the appropriate licensing authority for guidance where they become aware that sanctions may apply to activities that they have participated in or are participating in. Managing agents are also reminded that sanctions legislation may require them to notify the appropriate licensing authorities of certain matters (including sanctions violations) of which they become aware, whether these relate to their own business or the business of others. They should also notify Lloyd's International Regulatory Affairs.

8. **Records and Review** - Managing agents should ensure that these processes and procedures are fully documented, regularly updated and reviewed so as to demonstrate that they comply with applicable sanctions.

9. **General Approach** - Managing agents are advised to exercise caution surrounding the conduct of due diligence and screening. Managing agents should devise risk-sensitive procedures that seek explanation of matters surrounding the identity of the proposed (re)insured, its related parties and all other parties that may benefit from or receive payment under a (re)insurance contract, as appropriate. Managing agents are encouraged to seek full explanation of contractual arrangements which could give rise to increased sanctions risks. If managing agents cannot obtain an adequate explanation, managing agents should consider whether it is safe to proceed with the transaction concerned. If, after explanation, it is hard to understand why a transaction is structured in a certain way or it is hard to identify all the potential beneficiaries of a (re)insurance contract (when it should not be), this may give cause for concern.

APPENDIX 2

HIGH LEVEL SUMMARY

1.0 Part 1 - Background Information regarding Sanctions and Guidance on Due Diligence and Screening Procedures of General Relevance

- Managing agents must implement reasonable and proportionate due diligence and screening processes to prevent infringement of financial and trade sanctions and to comply with regulatory requirements.
- Managing agents should determine what due diligence and screening processes to adopt based on their sanctions risk profile, which should be assessed by reference to risk factors relevant to the managing agent concerned (although managing agents should bear in mind that breaches can create civil and criminal liability and therefore expose them to a risk of prosecution.) Sanctions risk assessments should not be used to justify substandard or inadequate sanctions due diligence and screening processes.
- Due diligence in relation to financial sanctions should focus on identifying the (re)insured and all beneficiaries of cover (and those receiving payments under it, including where appropriate, agents and intermediaries), as required, as well as, in appropriate cases, the persons and entities that own or control the (re)insured and/or beneficiaries of cover (and potentially those parties who make payments to them (including premium), if this is different from the named (re)insured).
- Where it is required, due diligence for trade sanctions should focus on identifying the goods, equipment or services, the nature of the trade, the intended use or specification of the items, the location, origin and destination of the items, and the identity of those involved in the trade or handling the items.
- Brokers may be a useful source (but not the only source) of the information required for due diligence and Lloyd's considers that it is reasonable for managing agents to request that brokers obtain such information from their clients. Managing agents should take steps to ensure that they can rely on the information provided to them by brokers.
- Managing agents should screen the information they obtain from their due diligence against all applicable sanctions lists (including, for example, HM Treasury's Consolidated List of Sanctions Targets) and, if relevant, against applicable export control/trade sanctions lists. Managing agents should also conduct due diligence and screening for persons/entities/activities targeted by non-list based sanctions (for example, Iranian/Syrian persons and sanctions which impose investment bans on certain countries/industries). Where matches are confirmed, appropriate action should be taken, such as not underwriting the risk, underwriting the risk subject to specific conditions/exclusions or under a licence, freezing the account, terminating the (re)insurance contract or, in the case of trade sanctions, obtaining a trade control licence. Further due diligence may be required in circumstances where a sanctions match is ambiguous.

- Managing agents should disclose sanctions matches to HM Treasury (and/or other authorities) and where possible to managing agents subscribing to the same insurance contract, Lloyd's International Regulatory Affairs and Xchanging (if appropriate).

- As a general rule, managing agents should carry out due diligence and screening during underwriting and prior to committing themselves to a risk in accordance with their risk-sensitive procedures.

- If identification of the person/entity or activity is not possible at the underwriting stage, due diligence and screening should take place as soon as identification becomes possible.

- Managing agent's risk-sensitive procedures should allow for the performance of further due diligence and screening when claims or other sums are paid, and at other appropriate times, including when the cover is amended or renewed or further information is provided, in accordance with their risk-sensitive procedures. If sanctions issues are identified post-underwriting they must be dealt with appropriately as soon as possible.

- Lloyd's considers it good practice for managing agents to mitigate the risk of sanctions infringement through the use of appropriate sanctions exclusions and warranties. However, sanctions exclusions and warranties should not be a substitute for proper due diligence and screening.

2.0 Part 2- Due Diligence and Screening Considerations by Method of Acceptance

This is supplementary guidance on due diligence and screening considerations by reference to the different methods by which a risk can be accepted.

2.1 Business where the (re)insured (and other beneficiaries) can be identified prior to inception (open market direct and facultative (re)insurance contracts)

- Managing agents participating in open market direct or facultative (re)insurance contracts should conduct due diligence and screening on the named (re)insured and related parties, agents and intermediaries and other identifiable parties who benefit from cover and, if applicable, the activities to which cover relates prior to entering into the contract concerned.

- Due diligence and screening should then be repeated as set out in the managing agent's risk-sensitive compliance procedures. As a minimum, this should allow for the performance of further due diligence and screening at the point at which claims or other sums such as return premiums are paid.

- In exceptional cases, it may not be possible to conduct sufficient due diligence prior to underwriting. If managing agents decide to proceed to underwrite in these cases, Lloyd's would normally expect:

  (i) the reasons for not obtaining this information to be compelling;

  (ii) appropriate senior personnel within the managing agent to have objectively assessed the risks associated with not obtaining this information prior to underwriting and to

have determined these to be low (and documented such consideration/decision accordingly); and

(iii) the managing agent to have:

(a) adopted specific and proportionate measures in the relevant (re)insurance contract to mitigate sanctions risk (for example, the inclusion of sanctions exclusions); and

(b) documented a plan to conduct due diligence and screening as soon as practicable.

- Following markets participating in these contracts may also wish to ensure that an appropriate level of authorisation/notification is required for post placement amendments to the (re)insurance contract concerned, where such changes may give rise to a sanctions exposure. This would normally take place by including such requirements in the slip subscription agreement (e.g., the GUA[1] stamp) and in the relevant section of the slip.

2.2 Business where the (re)insured (and other beneficiaries) can be identified prior to inception by the leader only or specified agreement parties

- Managing agents participating in contracts such as line slips and prior submit binding authorities as leading underwriters or agreement parties should conduct due diligence and screening in accordance with their own risk-sensitive compliance procedures prior to underwriting.

- Managing agents participating in these contracts as following underwriters must take steps to assess the sanctions risks associated with the arrangement before agreeing to participate in it.

o Where the following managing agent determines that due diligence/screening should take place pre-bind, they should assess whether they can rely on the due diligence/screening undertaken by the lead. If they cannot, they should consider whether (i) they can perform the due diligence/screening themselves; (ii) they can mitigate sanctions risk by other means (e.g., through the use of exclusion or termination clauses (bearing in mind that this will not obviate the need to conduct due diligence and screening)); and/or (iii) they can enter the arrangement at all.

o Where the following managing agent determines that due diligence/screening should take place post-bind, they should assess whether they can rely on the due diligence/screening undertaken by the lead and/or whether they can require the entity to which authority has been delegated to perform due diligence/screening on their behalf. If the latter option is taken, they should ensure that they incorporate specific procedures into the lineslip/binding authority agreement to enable them to do so, in accordance with their risk-sensitive procedures.

[1] The General Underwriters Agreement, which regulates the delegation of authority surrounding post-placement alterations between underwriters subscribing to a contract of insurance.

- Due diligence and screening should then be repeated as set out in the managing agent's risk-sensitive compliance procedures. As a minimum this should allow for the performance of further due diligence and screening at the point at which claims or other sums such as return premiums are paid.

- When dealing with brokers administering lineslips (who are conducting due diligence/screening), managing agents should ensure that clear, detailed and specific clauses are included within the lineslip setting out managing agents' required procedures in full (accompanied by a right to cancel risks and terminate the lineslip in the event of breach, if required).

- Managing agents should consider using sanctions exclusions when underwriting via this method of acceptance.

2.3 Business where the identity of the (re)insured (and other beneficiaries) or the precise activities to which cover will relate are unknown, or where only limited identification is possible.

- This may include business such as treaty, marine open cargo covers or risks where the (re)insureds can be added post inception. In such cases, managing agents should conduct due diligence and screening on identifiable (re)insureds and related parties and other identifiable beneficiaries of the cover and their activities prior to underwriting in accordance with risk assessment.

- Managing agents should always maintain procedures to conduct due diligence and screening on (re)insureds and other beneficiaries of the cover and their activities post-underwriting as soon as those parties/activities become identifiable.

- Where their risk-sensitive procedures justify this and except where there is a risk that the contract may trigger sanctions which prohibit the provision of cover (e.g. Iran/Syria sanctions and where the Terrorist Asset-Freezing etc Act 2010 may be relevant), managing agents may adopt a policy of specific due diligence and screening post-underwriting, in which case screening should take place before the payment of claims or other sums under the contract of (re)insurance. This should not, however, prevent due diligence and screening on identifiable (re)insureds, other beneficiaries of cover or their activities prior to underwriting.

- Managing agents are strongly recommended to deploy sanctions exclusions in such contracts and maintain ongoing vigilance surrounding them. Other contractual provisions may be relevant including rights of prior approval of risks; rights of audit and/or rights of termination.

- Before entering such arrangements, managing agents will need to perform an assessment of the sanctions risk associated with them and whether the broker (or unlicensed non-insurance intermediary) administering the facility can conduct due diligence/screening for sanctions.

- Where managing agents have agreed with brokers who manage these facilities that the brokers will conduct due diligence/screening, managing agents should ensure that clear,

detailed and specific clauses are included within the agreement setting out managing agents' required procedures in full (accompanied by a right to cancel risks and terminate the facility in the event of breach, if required).

- If the broker cannot perform due diligence/screening, managing agents should perform pre and post-bind screening themselves. The terms of the contract should adequately support this process.

- Even greater caution must be exercised in relation to unlicensed non-insurance intermediaries. Unless:

  (i) their assessment of sanctions risk to which they will be exposed is very low; or

  (ii) managing agents can, under the terms of the policy, retain a right to conduct due diligence and screening on risks/certificates attaching to such facilities and, where necessary, reject or apply conditions to them (in their absolute discretion) before they incept;

  (iii) Lloyd's considers that managing agents should ensure that full and effective sanctions exclusion and/or warranty wording is included on all documents and certificates issued by such parties.

2.4 Business where binding a risk is fully delegated (full binding authorities, consortia and other arrangements)

- Managing agents delegating underwriting and/or claims handling authority should take steps to ensure that their agent addresses both their own sanctions compliance and the managing agent's sanctions compliance. This should involve implementing those procedures that would have been performed by the managing agent itself if it were to perform such checks. Managing agents should bear in mind at all times that they remain fully responsible for any breaches of sanctions when underwriting under a delegated authority.

- Prior to entering into such arrangements, managing agents should perform a risk assessment of the arrangement. They will need to determine when due diligence/screening should take place, what due diligence information should be obtained and who can do this.

- Where the entity to which the managing agent proposes to delegate underwriting or claims handling authority can conduct the due diligence/screening, managing agents should include clear, detailed and specific clauses within the contract pursuant to which delegated authority is granted, setting out such procedures in full.

- Where the entity to which the managing agent proposes to delegate underwriting or claims handling authority cannot conduct due diligence/screening, managing agents should consider whether (i) they should participate on a prior-submit basis; (ii) other factors (such as sanctions exclusion and termination clauses) can mitigate risk to a sufficient degree (bearing in mind that this will not obviate the need to conduct due diligence and screening); or (iii) they should enter the arrangement at all.

- Post-underwriting, managing agents should ensure that ongoing due diligence/screening is conducted in accordance with their risk-sensitive sanctions procedures. Again, these procedures should be fully and specifically documented in the relevant contract.

2.5 Claims

- Lloyd's expects that all managing agent's risk-sensitive procedures will allow for further due diligence and screening for sanctions risks prior to the payment of claims or other sums under a contract of (re)insurance. The nature of these checks will be determined by each managing agent under its risk-sensitive sanctions compliance procedures, although screening is likely to focus on the person/entity to whom the claim is being paid (including loss payees) and, if appropriate, other identifiable beneficiaries of cover and/or of the payment concerned (and those who own or control the parties listed above).
- In settling claims, managing agents should be aware that individuals and entities subject to asset freezes that are either: (a) themselves designated; and/or (b) owned or controlled by designated persons/entities may present claims under a contract of (re)insurance. Where appropriate, the relevant licensing authority (e.g. HM Treasury) should be approached for a licence to pay the claim concerned.
- For claims paid under the Lloyd's Claims Scheme:
    - If the managing agent is the sole (re)insurer, on a contract it should perform due diligence and screening in accordance with its risk-sensitive compliance procedures in the normal manner prior to agreement of the claim concerned.
    - Where the managing agent is co-insuring in a subscription market, leading underwriters and claims agreement parties should perform their own checks prior to agreement of the claim concerned. Where sanctions issues are identified, leading underwriters should inform the following market directly, or if they do not have the details, via the broker.
    - Following underwriters should determine, in accordance with their risk-sensitive procedures, whether they should take further steps to understand what due diligence/screening has been performed by the lead. If they do, they need to take steps to notify the lead that they will require notice of claims before the lead agrees them (on the Electronic Claims File).
    - Where following underwriters need to perform further due diligence, leading underwriters have a duty to act in the best interests of the following underwriters under the Lloyd's Claims Scheme. Lloyd's considers that this requires leaders, prior to agreeing claims (on behalf of themselves and following underwriters), to:
        - (i) take reasonable steps to assist following Lloyd's underwriters in obtaining such reasonable further due diligence as they require; and
        - (ii) refrain from agreeing claims (at least on behalf of the following underwriters concerned) until they have received confirmation from

those following underwriters that they are in a position to pay the claim.

- o If following underwriters identify sanctions issues of general relevance during the claims process (of which the rest of the subscribing market is unaware), where possible they should share these details with the market via the leading underwriter (either direct, or through the broker, if required). Where following underwriters identify sanctions issues specific to them, they should notify the leading underwriter and instruct the leading underwriter (either direct, or through the broker, if required) on how to proceed on their behalf.

- Where managing agents have entered into arrangements with coverholders or third party administrators to settle claims on their behalf, they must ensure that clear, detailed and specific clauses are included within the relevant agreement setting out managing agents' required procedures in full.

3.0 Part 3 – Miscellaneous Compliance Procedures

- Managing agents should consider whether to approach the appropriate licensing authority for guidance on due diligence, licences or reporting sanctions breaches. Contact details are set out at paragraph **4 of Part 3** of this guidance.

- Where they act as part of a subscription market, managing agents are encouraged to co-ordinate licence applications. It is possible for licence applications to be made on behalf of multiple parties – underwriters intending to make such applications should contact the remainder of the subscribing market to determine whether they need to participate. Lloyd's accredited brokers may also want to participate in the licence application and where they do so will be expected to assist in the process.

- Managing agents should ensure that they implement and maintain effective procedures for sanctions training, for dealing internally with queries about the application of sanctions and for reporting proposed, actual or suspected violations of sanctions; and should audit their sanctions procedures.

- Lloyd's considers that managing agents should, unless they have particularly strong reasons, make use of screening software, which should be properly calibrated.

- Where managing agents identify a sanctions match post-underwriting, they may need to take a number of steps to freeze the account concerned and to ensure that claims are not paid to the person/entity, or in relation to the trade/goods/equipment/services, concerned. In all cases, managing agents must take steps as soon as possible to ensure that the position is addressed.

- If managing agents know or suspect that an offence under sanctions law or regulation has been committed, they must report this to HM Treasury and/or other enforcement agencies (including, possibly, the Serious Organised Crime Agency) and should also notify Lloyd's International Regulatory Affairs (provided that this would not constitute a "tipping off" offence). General guidance on reporting obligations is set out in Market Bulletin Y4117.

4.0 Part 4 –Other Sanctions Regimes and US Sanctions

- Managing agents should take specific note of those broad sanctions regimes in place against Iran and Syria and also of the provisions of the Counter Terrorism Act 2008, the Terrorist Asset-Freezing Act 2010 and trade sanctions.
- Managing agents are reminded of the Lloyd's Market Direction not to underwrite Iranian Refined Petroleum Risks as defined in Market Bulletin Y4409.
- US sanctions may be relevant to a managing agent's activities. Most US sanctions apply to "US Persons", but some US sanctions are of general relevance to the entire Lloyd's Market.
- US sanctions may be relevant to a non-US Person's activities when conducting transactions in US dollars, when conducting transactions related to US-origin goods and also in the case of the Comprehensive Iran Sanctions and Divestment Act ("CISADA").
- With regard to US sanctions, further guidance on the additional due diligence and screening procedures that managing agents who are "US Persons" should take will be included in the US-sanctions country-specific guidance notes found on the Lloyd's Crystal Tool.