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Russia’s Invasion of Ukraine: Maximizing Insurance Coverage to Mitigate Financial Losses

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Russia’s invasion of Ukraine has led not only to severe humanitarian consequences, but also to severe economic consequences for Ukrainians, Russians, and others who conduct business within the region. From the destruction of physical property in Ukraine, to forced abandonment of Ukrainian assets, to trade interruptions stemming from global sanctions on Russia, economic fallout from the invasion has been, and will continue to be, vast and wide-ranging.

Fortunately, political risk insurance policies may cover some of the economic distress that stems from precisely this type of situation. While each is different, political risk policies often cover losses arising from forced divestiture or forced abandonment of assets, as well as political violence, currency inconvertibility, business interruption, and expropriation. Such policies could come into play in a variety of ways with respect to Russia’s invasion of Ukraine:

- Forced divestiture and forced abandonment of assets coverage protects a policyholder from losses arising from the necessary abandonment of a company’s operations. This type of coverage often requires that a government agency (such as the U.S. Department of State) advise evacuation, either of all citizens or government personnel. The United States issued such an advisory to citizens to leave Ukraine prior to the Russian invasion. Thus, losses stemming from a U.S. company’s inability to conduct its business due to the evacuation of U.S. personnel may be covered.

- Political violence coverage protects policyholders from losses arising from property damage due to riots, protests, other civil commotion, and sometimes war and politically-motivated terrorism. Therefore, losses stemming from property damage due to Russia’s invasion of Ukraine may be covered.

- Currency inconvertibility coverage protects policyholders from losses arising from their inability to convert local currency into foreign exchange due to exchange restrictions posed by a foreign government. Technically, the U.S. dollar is still tradeable in Russia, although the

Russian ruble has sunk to record low levels. Ukraine has suspended all currency trading; whether this type of coverage applies will depend heavily on policy language.

- Business interruption coverage may offer protection when any of these events results in loss of business income. Companies that have been required to cease operations due to the disruption that sanctions have had on supply chains may potentially seek coverage for losses stemming from such interruption.

- Expropriation coverage protects against losses caused by government actions that deprive the insured of all or part of its interest in a foreign investment or enterprise. This may include reducing the control or rights of the insured's investment, such as depriving the insured of its tangible property or control over its funds. Russian President Vladimir Putin has expressed support for a law to nationalize assets of foreign companies that leave Russia over its invasion of Ukraine. To the extent such nationalization comes to pass, expropriation coverage may apply.

Understandably, insurance may not be a company's first concern when seeking to protect the health and safety of its employees during violent conflict. But it is important for companies to act quickly to ensure that they maintain their coverage rights. Actions taken now may have a significant impact on potential insurance recovery later.

First, policyholders should examine all "notice" requirements under their policies. These requirements prescribe when and how a policyholder must provide notice to the insurer that the policyholder intends to file a claim. Particularly because these requirements may be subjective (such as requiring notice to be provided "as soon as reasonably practicable"), it is important to provide notice promptly and to keep clear records of all actions taken. In addition, certain policies may have rigid documentation requirements; keeping good records now will make securing coverage an easier task later.

Second, policyholders should review any deductible (or self-insured retention) requirements, which typically are listed near the beginning of a policy. Understanding the deductible amount and weighing it against the policyholder's losses or potential losses will help the policyholder in evaluating the merits of pursuing coverage from an insurer.

After taking these initial steps, there are several provisions policyholders should be aware of in moving forward with a claim. Many political risk policies contain choice of law provisions. These policies may require the use of the foreign state's law, and potentially the use of the foreign state's jurisdictional forum. Of course, filing a claim in such a forum may prove difficult or even impossible given the rapidly evolving, complex situation on the ground. And application of Russian law to a coverage dispute that may involve questions over whether the insured's losses stemmed from unlawful actions by the Russian government may pose substantial complications. Policyholders should read the policy carefully to determine the scope and applicability of such choice of law and forum provisions. Of course, every insurance policy is different, and the scope of potentially available coverage will be driven by specific policy language and specific law in various jurisdictions. It is important to analyze policy language carefully to preserve and maximize potential recoveries.

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