






# Ukraine

## Technical update 1

### Policy implications of the war between Russia and Ukraine

The current war between Russia and Ukraine is generating a number of potential exposures for insurers and their clients across a broad spectrum of policy types. Specialty lines in particular could be exposed to claims as a direct result of the conflict itself as well as the wider global impacts resulting from the event and related sanctions.

The purpose of this briefing document is to provide guidance for clients as to the potential impact of the conflict on different types of cover, including:

-  Political violence
-  Political risk
-  Business interruption
-  Marine
-  Cyber

### Political violence, political risks and associated covers

At this difficult time, when our thoughts are directed to recent and ongoing events in Ukraine, the ensuing humanitarian crisis and the international support being offered, the potential for Political Violence insurance to be impacted is an area of considerable focus and the insurance markets will be considering the likely impact of such events on the industry and how claims may develop.

It is important to note that commercial property policies likely include a “war exclusion” that will exclude coverage for losses arising from acts of “war.” Typically, a war exclusion means that the property policy would exclude losses or damages arising directly or indirectly from “war.” The policy language typically specifies the exclusions as:

“

War, hostile or warlike action in time of peace or war, whether declared or not, including action in hindering, combating or defending against an actual, impending or expected attack... by any government or sovereign power.

”

Underwriters will be reviewing policy wordings as well as the facts and circumstances surrounding a loss to determine whether the war exclusion is applicable to a particular claim and may decline claims where the war exclusion is found to be pertinent.

Simultaneously, corporates large and small, will be examining their risk registers to determine their potential exposures. For those organizations who have Political Violence and / or Political Risks policies, with exposures in Ukraine and Russia, both physical and financial, notifications to Underwriters will follow.

### The potential impact

It is not only the physical damage with which we should be concerned. Whilst many exposed corporates will still be assessing the impact, some corporates will already have divested, or suspended their Russian investments and will be able to measure the financial impact on their balance sheet relatively quickly. However, it is likely that there will be difficulties further downstream from investors who may try and recoup losses by alleging these companies could have adopted a different strategy. Directors and Officers Policy Notifications may follow.

Already we have seen the negative financial impact worldwide from the stock market volatility, oil and commodity prices, merchant cargo and shipping costs, aviation interruptions, disruptions in the banking and investment sectors and loss of Russian

imports / exports. Any country, state, territory or entity that does business with Russia will be financially impacted. Pension and investment funds that have Russian exposure have been frozen and those funds have plummeted in value and cannot be removed and / or sold.

## Political violence

With standard commercial policies excluding war, terrorism and associated exposures, clients needing war, political violence or terrorism insurance coverage, need to seek out bespoke covers. The purpose of a political violence policy is to dovetail with the commercial property policy and to indemnify those risks, within the political violence class, that fall within the standard exclusions in the commercial property policy.

There are a range of covers available within the political violence classes. These include:

- Terrorism and sabotage
- Riots, strikes and civil commotion and malicious damage
- Insurrection, revolution and coup d'état
- War and civil war
- Employee and general terrorism liability

Coverage is for direct physical loss or damage and resulting business interruption on either a gross earnings or loss of profit basis. Also included is ICW, loss of rental income and time element extensions.

- War, Terrorism and Political Violence Insurance offers worldwide coverage to assets exposed to these risks.
- Clients who need these covers range from small companies with single asset exposure to multinational companies with global exposure.
- Standalone policies usually offer up to USD 250 million / GBP 200 million – either Per Occurrence or Per Occurrence and Annual Aggregate.
- Deductibles range from USD 1,000 to USD 1 million.
- Terms Operational – 12 to 36 months / construction up to 60 months.

## Chemical, biological, radiological and nuclear

Additional optional covers which can be purchased, and which could be considered in the current climate include CBRN. These covers include the following:

- Chemical, biological, radiological and nuclear (CBRN)
- CBRN Liability
  - Cover is offered on a worldwide basis for assets that are exposed to war, terrorism and political violence events.
  - The use of chemical, biological, radiological and nuclear (CBRN) weapons is a growing concern worldwide. Deployment would have a devastating impact, potentially causing damage and interruption to businesses a significant distance away from the CBRN release.
  - It is usual for the CBRN policy to be triggered when property is damaged or contaminated as a result of an act of terrorism or other malicious act.

### Standard cover includes:

- Property damage caused by blast / detonation of a CBRN weapon.
- Decontamination and clean-up costs following a CBRN order.
- Demolition and debris removal following a CBRN order.
- Denial of access following a CBRN order.
- Business interruption.
- Policies usually have no location restrictions and can therefore be indemnified if the affected property is 10m or 50 miles from the origin of the attack. In other words, the insured asset does not have to be within x distance of the discharge of the CBRN weapon.
- Policies usually have the benefit of expert response consultants, providing both pre-loss planning and post-loss business continuity management services.
- Bodily injury is not normally standard but can be added.

## Political risks

Instability in a country can happen without warning, leaving investors, lenders and contractors unprepared and counting the financial cost. In the political upheaval, businesses may not be able to operate, and their assets may be damaged or confiscated, none of which would be covered by a standard commercial property insurance policy. Political risk insurance helps organizations conducting business around the world protect their assets and financial interests from monetary losses due to specified political risks.

These can be from such losses as being unable to convert currency, government interference and political violence, including terrorism. Political risks insurance is designed to protect a business against arbitrary government actions such as confiscation, expropriation, and nationalism; selective discrimination; forced divestiture; license cancellation and breach of contract.

It can also include coverage for loss or damage to physical assets as a result of violence, abandonment of assets or abandonment of the foreign operations as a result of political violence.

Further, political risk insurance covers the exposures of importers or exporters in differing scenarios, such as ceasing operations where exports are crucial to the business; or loss of products that only have value if exported.

As has happened with the banking and investment restrictions, political risk can respond when restrictions on foreign exchange prevents remittances relating to dividends, shareholder loan payments, intercompany payables, and sale proceeds.

Some coverage may be available to project lenders to protect investors against the failure of sovereign governments to meet their debt obligations due to political violence.

Political risk insurance for contractors may provide coverage to construction, engineering, and other contracting firms against associated losses due to political upheaval or government action.

## Trade credit

Companies buy trade credit insurance if they supply goods or services to other businesses on credit, to protect against the risk they will not get paid or will be paid late. The global trade credit insurance market underwrites nearly USD 3 trillion in trade receivables. Government-backed export credit agencies also provide insurance, in addition to private trade credit insurers.

The physical and economic impact of the war will increase the likelihood that businesses in Ukraine buying goods from the West will default on payments, raising risks for trade credit insurers.

In addition, restrictions on payments between Europe and Russia are making insurers nervous as to whether exports to Russia will be settled.

When it comes to trade credit insurers' outstanding business in Ukraine and Russia, they will face significant claims if exporters do not see their invoices indemnified.

Trade credit insurance, like many other types of commercial insurance, typically carries a war exclusion.

However, under this war exclusion clause, policyholders cannot claim for war-related losses if there is a conflict between two of these five major powers – US, UK, France, China or Russia. In this regard, specific wordings will require careful review.

In these uncertain times, those Insured entities with the benefit of some or all of these covers will be looking to Insurers to provide certainty in relation to physical and financial losses to which they have been exposed.

## Business interruption

It is expected that there will be a large number of potential risks which have the potential to impact on the trading profit of organizations which have either operational bases in Ukraine and Russia or have customers or supply chain dependencies in either country.

The affected businesses can be expected to review their commercial property and business interruption covers to assess whether they will be able to obtain an indemnity for their losses.

Apart from the obvious material damage directly resulting from the conflict and the trading losses which follow, there is also expected to be occasions when extensions may be triggered including:

- Customers and suppliers' extension – extending insured premises boundaries.
- Non damage denial of access clauses.
- Utilities extensions – accidental damage to suppliers and terminal ends covers.
- Loss of Attraction.

However, fear within individuals that a dangerous insured event may take place so that it causes them to alter their activity and results in trading losses, is not normally sufficient to trigger these covers, but this may vary between jurisdictions.

Whilst the extensions may be triggered by the conflict in Ukraine and secondary action in Russia, policies are expected to include in General Exclusions an exclusion in respect of war.

The construction of the war exclusion between geographic regions varies but those reviewed relating to UK, US and Australian wordings are seen to be wide in scope and are expected to respond to the events in the Ukraine.

The General Exclusions generally include a separate nuclear risk exclusion which is expected to work in tandem with the war exclusion should losses result from an event such as a missile strike on a power station resulting in widespread contamination.

The expectation is that the war exclusions will operate and preclude claims under commercial property wordings for damage and trading losses from progressing.

## Marine

The Joint War Committee indicate areas of the world where shipowners are required to give prior notice to their hull underwriters of voyages

involving those. The Black Sea is now included which will include Odessa and Mariupol ports in Ukraine. There are often restricted trading area warranties in hull policies, but underwriters will not likely restrict the physical passage of vessels and their cargo in the effected region, if notified prior to commencement of the voyage.

Subject to sanctions rules, cover for voyages in the region and for static / storage / stock throughput risks and associated physical loss or damage may still be available. Rates are of course subject to negotiations and the individual underwriter's decision, but will likely harden, if cover is indeed available from some of the niche insurers.

### War and other exclusions

Marine hull and cargo standard clauses have specific exclusions for any loss or damage caused by war, capture, seizure or acts of a belligerent power. Hull policies operate on a named perils only basis, where the onus is on the insured to evidence where damage by one of those perils has occurred. Conversely, cargo cover is on a wider 'all-risks' basis with named exclusions. Cargo insurers have the burden to show one of the exclusions caused the loss.

War cover is available in the hull and cargo markets on the same basis, but not always purchased and will not cover frustration of voyage or loss / damage caused by delay. Delay is a generally excluded peril under most marine insurance policies. Some policies may have extra expenses and forwarding charges clauses, but again these normally require the operation of a named peril before they are triggered. We expect to see losses arising from insolvency or default of shipowners and cargo shippers as a result of the impact to their trading patterns, but these are generally also excluded.

### Trading restrictions

Whilst normal marine physical loss or damage insurances will continue (and marine insurance for liabilities to crew, pollution etc. is compulsory), trading will be severely restricted due to sanction issues.

Russia being a major exporter of steel, potash, oil-based refined goods, gas and other raw

materials, those shipowners and cargo shippers / receivers involved in those trades will be heavily affected. Some shipowners will have purchased loss of hire insurance (akin to BI policies for ship-owners), but these generally require a recoverable hull insurance claim before they are triggered.

There will likely be many shipments awaiting export from Russia and Ukraine which are not possible to ship physically or legally which will result in delay, spoilage, pilferage and rejection issues. Some large cargo commodity firms buy trade disruption insurance for their cargo, but individual policy wordings will determine coverage for any losses arising from the Russian invasion of Ukraine.

### Claims

In the event of an incident involving a vessel, its cargo or static stock arising from the hostilities and / or the sanctions all of the above must be considered along with the actual policy wording, location of the cargo, the voyage and the nationalities / firms being the parties to the maritime adventure – essentially the nexus of the marine risk.

## Cyber

Many countries and global businesses are seeing an increased risk to cyber security as collateral damage from state-sponsored cyber-attacks on infrastructure and other strategic targets.

Cyber-attacks are now common in modern warfare. As witnessed with prior cyber-attack campaigns that were likely originally intended for a specific target or a country, it is possible that internet-wide disruptions can occur, including in regions and countries where our company, clients and affiliates operate or have business.

This can be caused directly by the nation-state perpetrating the attack or by cybercriminals who often obtain and weaponize state-sponsored tools on a broader scale.

Threat actors frequently seek to take advantage of vulnerabilities created by disruptive world events, which is why we saw a spike in cyber-attacks during the pandemic.

In this heightened risk environment, we encourage insurers and their insureds to take all precautions to reduce their cyber vulnerabilities. This should include ensuring that:

- All cybersecurity protocols are implemented and are enforced
- Security operation centers are appropriately staffed
- Systems and devices are all patched, including third-party software and firmware
- Firewalls are tested and enforced
- Antivirus software is updated
- Passwords are unique and updated
- Backups are running correctly and the ability to restore from backups tested
- Employees are briefed on the heightened risk and encouraged to report anomalies

## Coverage considerations

The insurance market is assessing the increased risks and exposures stemming from the escalation of activity in Ukraine and looking closely at the wording and application of war exclusions as it may not be obvious how to attribute an attack that was, for example, perpetrated by a threat actor using a tool developed for an act of war.

In the Lloyd's Market, all insurance and reinsurance policies must contain a war exclusion, except in very limited circumstances. However, the LMA Cyber Business Panel drafted four Cyber War and Cyber Operations clauses in 2021 (LMA5564-7), which means the extent of coverage and exclusion may vary from policy to policy.

The complexity of the situation and the application of different clauses in the market means a close examination of policy wordings will be required in the event of any claim. [Crawford's dedicated global cyber teams](#) are on standby to assist and respond as needed.



# For further advice or guidance, please contact one of our experts:

## **Benedict Burke, BA, ACII, FCILA**

Chief Client Officer

Global Client Development

**M:** +44 07919 552624

**E:** benedict.burke@crawco.co.uk

## **Rob Hawes**

Global Head of Marine

**T:** +44 207 265 7191

**M:** +44 7786 312775

**E:** rob.hawes@crawco.co.uk

## **Rowena Byrne-Jones, LLB, LLM, ACII, MCIArb, FCILA, FUEDI ELAE, FIFAA**

Divisional Director

Casualty Specialist and International Risks

**T:** +44 207 265 4318

**M:** +44 7468 861063

**E:** rowena.byrne-jones@crawco.co.uk

## **Paul Handy, BSc(Hons), MBA, ACII, FCILA, FUEDI ELAE, FIFAA, ACMI**

Global Head of Cyber

**T:** +44 207 265 4320

**M:** +44 7827 879187

**E:** paul.handy@crawco.co.uk

## **Richard Keegan, FCCA, FCILA**

Director

Crawford Forensic Accounting Services

**M:** +44 7823 521978

**E:** richard.keegan@crawco.co.uk

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