

No. 29 2010/2011 - Ivory Coast Sanctions

January 2011

Dear Sirs

Ivory Coast Sanctions

The EU has adopted Council Regulation (EU) No 25/2011 on 14 January 2011 amending Regulation (EC) No 560/2005.

EC 560/2005 as amended follows the refusal of President Gbagbo to hand over power following recent elections. It imposes economic sanctions on those who may do business with him and other parties. The Port of Abidjan and the Port of San Pedro are now sanctioned parties. Others include PETROCI, the National Petroleum Operations Company of Côte d'Ivoire, and SIR, the Ivorian Refining Company. The sanctioned parties are subject to an asset freeze and there is a broad prohibition on making funds and economic resources available to them.

The Regulation applies:

- within the territory of the Union, including its airspace;
- on board any aircraft or any vessel under the jurisdiction of a Member State;
- to any person inside or outside the territory of the Union who is a national of a Member State;
- to any legal person, entity or body which is incorporated or constituted under the law of a Member State and
- to any legal person, entity or body in respect of any business done in whole or in part within the Union.
- to vessels registered in the EU

The key provisions of the Regulation are widely drafted and adopt the language commonly used in sanctions legislation. They say that:

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex I or Annex IA of the Regulation shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities and bodies listed in Annex I or Annex IA.

The newly sanctioned parties are listed in Annex 1A and "Economic resources" are defined as "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services".

Authorisation can be obtained from the competent authority within the Member State to make funds or economic resources available to a sanctioned party but the grounds on which such permission can be granted are extremely limited. Permission may be obtained in respect of "extraordinary expenses" although they are not defined and probably do not include routine payments or disbursements.

It appears that an offence would be committed if an EU corporate (or national) made payment of port dues or other disbursements/expenses to the Port of Abidjan or the Port of San Pedro even where the payment is made by an agent.

Extreme caution should be exercised because it is not necessary for payment or assets to be made available directly to the sanctioned party in order for an offence to be committed. It is also an offence to attempt to structure payments or agreements for the purpose of circumventing the restrictions set out in the Regulation.

Members should also be aware that the sanctions could prevent the Club from providing security to a sanctioned party.

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

R J B Searle
Director