



# Krieg und Sanktionen

Einfluss auf RV-Verträge

# Agenda

## Krieg und Sanktionen: Einfluss auf RV-Verträge

### Krieg

- Vertragliche Kündigungsklauseln
- Force majeure
- Risikoausschlüsse
- Fallbeispiel

### Sanktionen

- Rechtsgrundlagen
- Vertragliche Regelungen
- Einheitliche Sanktionsregime

### Reputationsrisiken

### Q&As

# Vertragliche Kündigungsklauseln

## Beispiel L&H

### Article 11.2

### Special Termination

Either party has the right to terminate this Agreement with immediate effect by giving written notice to the other party upon the occurrence of any of the following conditions:

- it is impossible for this Agreement to be fulfilled de jure or de facto for unforeseeable reasons outside the control of the party giving notice;
- the other party has bankruptcy or winding-up proceedings

In the event of an interruption of communications, notice of termination shall be deemed to be given as soon as it has been dispatched or dispatch has been attempted, provided documentary proof of dispatch exists.

# Vertragliche Kündigungsklauseln

## Definition Force Majeure

“Force Majeure” means the occurrence of an event or circumstance (“Force Majeure Event”) that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment (“the Affected Party”) proves:

- that such impediment is beyond its reasonable control; and
- that it could not reasonably have been foreseen at the time of the conclusion of the contract; and
- that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party.

## Ausschlussklauseln L&H

- In proportionalen Rückversicherungsverträgen finden sich grundsätzlich keine Ausschlussklauseln. Es wird erwartet, dass Risikoausschluss in Originalpolicen vereinbart ist;
- Heute in einigen Märkten keine Risikoausschlüsse für Kriegsrisiko, in anderen nur Ausschlüsse für aktives Kriegsrisiko; und
- Bzgl. aktivem Kriegsrisiko vielfach Deckung für Friedensmissionen der UN.

In nicht proportionalen Verträgen finden sich folgende Ausschlüsse für Kriegsrisiken:

- Notwithstanding the provisions of this treaty, it shall not apply to any liability which arises directly or indirectly out of or in connection with, any of the following:  
War, civil or foreign, whether declared or not, strike, riot, civil commotion to the extent that the insured has taken an active part; or  
War, whether declared or not, invasion, act of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to an insurrection, a rebellion, a revolution, or a popular or military uprising.

## Ausschlussklausel LMA

### LMA5564 - War, Cyber War and Cyber Operation Exclusion No. 1 (For use on commercial cyber insurance contracts)

1. Notwithstanding any provision to the contrary in this insurance, this insurance does not cover any loss, damage, liability, cost or expense of any kind (together “loss”) directly or indirectly occasioned by, happening through or in consequence of **war** or a **cyber operation**.
2. The insurer shall have the burden of proving that this exclusion applies.

#### Attribution of a **cyber operation** to a **state**

3. The primary but not exclusive factor in determining attribution of a **cyber operation** shall be whether the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located attributes the **cyber operation** to another **state** or those acting on its behalf.
4. Pending attribution by the government of the **state** (including its intelligence and security services) ...

### LMA5567 – War, Cyber War and Cyber Operation Exclusion No. 4

#### (For use on commercial cyber insurance contracts)

1. Notwithstanding any provision to the contrary in this insurance, this insurance does not cover any loss, damage, liability, cost or expense of any kind (together “loss”) directly or indirectly occasioned by, happening through or in consequence of:
  - 1.1. **war** or a **cyber operation** that is carried out in the course of **war**; and/or
  - 1.2. retaliatory **cyber operations** between any **specified states** leading to two or more **specified states** becoming **impacted states**; and/or
  - 1.3. a **cyber operation** that has a major detrimental impact on:  
...

## Merck vs. ACE

- Schaden in Höhe von 1.2 Mrd USD durch Cyberattacke Non-Petya 2017;
- Ausschlussklausel für Krieg wie folgt vereinbart:

### **i. Hostile/Warlike Action Exclusion Language**

A. 1) Loss or damage caused by hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:

a) by any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces;

b) or by military, naval, or air forces;

c) or by an agent of such government, power, authority or forces;

This policy does not insure against loss or damage caused by or resulting from Exclusions A., B., or C., regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

- Für Gericht war der Ausschluss nicht einschlägig, da eine “kriegsähnliche” Handlung einen Krieg voraussetzt, der mit konventionellen Mitteln geführt wird.

## Rechtsgrundlagen

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Various countries have imposed sanctions against Russia following acceptance of independence of territories in Eastern Ukraine and Russian invasion into territory of the Ukraine. Main sanctions regimes are as follows:

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USA: OFAC verhängte in vergangenen Wochen zahlreiche Sanktionen gegen Russland und Weissrussland

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In der EU wurden die Verordnungen (EU) 833/2014 und (EU) 269/2014 mehrfach ergänzt

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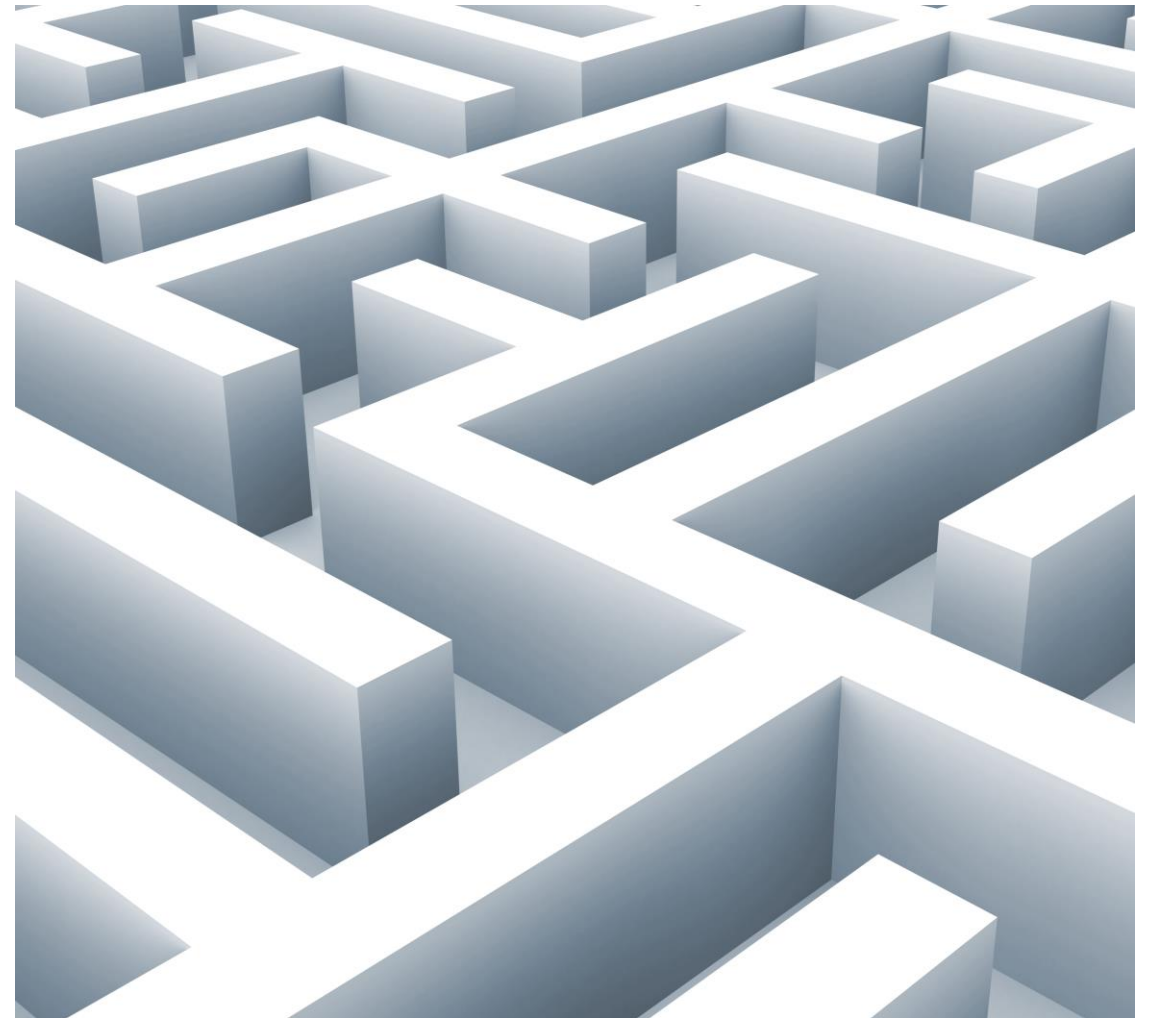
Andere Staaten wie z.B. UK, Singapur, Japan, Australien und Kanada haben ebenfalls Russland und Weissrussland mit Sanktionen belegt.



# Sanktionen

## Rechtsgrundlagen

- Einheitliche Anwendung von Sanktionen?
  - Eigentumsverhältnisse
  - Personen und Unternehmen
  - Waren und Dienstleistungen



## Vertragsklauseln

LMA 3100

### Sanction Limitation and Exclusion 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, the United Kingdom or the United States of America.

Kein Krieg in Russland, so dass ausserordentliche Kündigung ausscheidet;

Aber: Sanktionen und ausserordentliche Kündigung (vertragliche Pflichten können nicht erfüllt werden oder dürfen nicht erfüllt werden)

