Canada considers amendments to sanctions regime targeting Russia

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What you need to know

- Canada and its allies are considering amendments to their respective sanctions regimes in light of the build up of Russian Federation Armed Forces troops on Ukrainian borders, and the risk of a military incursion across the Russia/Ukraine border.
- There is a possibility that comprehensive and expansive amendments to the Russia Regulations, which will likely affect Canadian businesses with operations in, or trade with, Russia, including supply chains and ongoing transactions.
- Businesses should ensure that their sanctions screening programs are current and should proactively identify business relationships or operations that may be affected by amendments to the Sanctions Regime.

The Sanctions Regime

In March 2014, following the illegal occupation and subsequent annexation of Crimea, the Government of Canada enacted the:

- *Special Economic Measures (Russia) Regulations* (the Russia Regulations);
- *Special Economic Measures (Ukraine) Regulations* (the Ukraine SEMA Regulations); and
- *Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations* (the Ukraine FACFO Regulations, collectively with the Russia Regulation and the Ukraine SEMA Regulations, the Sanctions Regime).

Since then, any person in Canada and any Canadian outside Canada is required to adhere to these laws.

Prohibitions

The Russia Regulations create tiers of restrictions that correspond to whether a designated person or good is included in a specific schedule of a regulation. These regulations prohibit dealings in property held by designated persons, entering into or

facilitating transactions related to a dealing, providing financial or other services related to a dealing, making any goods available to a designated person, and providing financial or other services for the benefit of a designated person (the Dealings Prohibition). These regulations also prohibit certain new debt financing and new equity financing transaction, and the export, sale, supply or shipment of certain goods used in certain in Russian oil operations.

The Ukraine SEMA Regulations implements a dealings prohibition on designated persons and prohibits certain activities in the Crimea region of Ukraine.

The Ukraine FACFO Regulations prohibit persons in Canada or Canadians outside Canada from dealing in property held by a politically exposed foreign person (PEP), entering into or facilitating financial transaction related to that property, or providing financial services or other services in relation to that property. The schedule to the regulation provides a list of targeted PEPs, provided by the Ukraine to the Government of Canada, that have either misappropriated property of the Ukraine or acquired property inappropriately.

The Russia Regulations are targeted, not comprehensive. For example, the regime does not prohibit Canadians or persons in Canada from operating in Russia or from transacting with all Russian entities, unlike the embargo enacted against North Korea. While there are prohibitions on dealing or transacting with the property of designated persons, persons in Canada and Canadians may still engage in transactions with non-designated persons. The financial restrictions in the Russia Regulations do not bar investment in non-designated persons, but prohibit debt or equity investments in designated Russian persons for specified periods. Persons in Canada and Canadians are also free to transact with non-designated persons.

The Ukraine SEMA Regulations are more comprehensive. Amongst other prohibitions, Canadian businesses are restricted from investing in, providing financial services to, importing or purchasing goods from, exporting goods to, providing technical data or services to, providing financial services related to tourism, or docking cruise ships in the Crimea region of Ukraine.

Due Diligence Requirements

These restrictions require Canadian businesses to properly conduct due diligence when engaging in any transaction considered by the Sanctions Regime. Conducting due diligence is not simply checking a name against a list, it is ensuring a proper “Know Your Client” system is in place that is continuously updated to reflect amendments to Canadian and other international economic sanctions laws. Additionally, prescribed Canadian financial services are required to determine, on a continuing basis, whether they are in possession or control of property owned or controlled by or on behalf of a designated person and to disclose any property to the RCMP.

Potential amendments to the Sanctions Regime

The possibility of comprehensive and expansive amendments to the Russia Regulations are looming and will likely affect Canadian businesses with operations in, or trade with, Russia. Given the gravity of the situation and the momentum of international

cooperation in the context of strong warnings from the Biden administration and the EU, it is less likely that future amendments will be concerned with striking a balance between reaching into the Russian economy and unintended affects on the Canadian economy. Canada and its allies may far more comprehensively target the Russian financial system and its oil and gas sector in ways and with reach not seen to date in the current Russia Regulations. For example, isolating Russian banks by disconnecting Russia from the SWIFT global payment messaging system, applying sanctions to Russia's Nord Stream 2 gas pipeline, or sanctioning Russian bonds to deprive Russia of foreign financing. Canada may also choose to designate more Russian government officials under the Russia Regulations, or under the *Justice for Victims of Corrupt Foreign Officials Act*.

There is also the possibility that the United States or Canada will impose restrictions on exports to Russia, for example, microchips and other key inputs vital to the functioning of the Russian economy. Canadian businesses exporting U.S. origin goods should pay particularly close attention to any changes in U.S. export controls with respect to Russia and the permitting requirements under Canadian law for U.S. origin goods. Item 5400 in Group 5 of Canada's *Export Control List* requires all U.S. origin goods to obtain an export permit if exported to any country other than the United States. Any changes to U.S. export controls may impact the Canadian permitting process.

Impact on Business Operations

Amendments to the Sanctions Regime may interrupt business operations, including supply chains, past investments, and ongoing transactions and relationships with targeted entities/individuals. Businesses should ensure that their sanctions screening programs are current and should proactively identify business relationships or operations that may be affected by amendments to the Sanctions Regime. Any amendments may be implemented quickly to maximize the economic costs on Russia; regulations are not subject to the normative Parliamentary process for passing government bills into law, meaning the ground can shift almost overnight, with significant consequences for businesses. Canadian businesses should pay careful attention to the addition of designated persons the Sanctions Regime, and in particular, amendments to the scope of the prohibitions under the Russia Regulations.

How BLG can help

BLG has the requisite skill and expertise to help provide advice on the application of Canadian sanctions legislation and to guide Canadian businesses through a review of their sanctions compliance policies and standard operating procedures.

For any questions or comments, please reach out to any of the Key Contacts listed below.

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