

## Ongoing Impact of Canadian Sanctions Against Russia - as of July 18, 2022

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The military invasion of Ukraine by Russia has given rise to a continuous swath of far-reaching sanctions on Russia and Russian entities by Canada, the US, the EU, and other countries that touch on the global reach of Canadian business, including transactional, financial, and contractual matters for oil and gas companies, mining companies, commodity producers, technology and goods producers, service suppliers, financial institutions, shipowners, charterers, insurers, ports and cargo owners, among other parties collaterally impacted by the sweeping multijurisdictional sanctions.

All companies, but in particular companies doing business with or in Russia, Belarus, Ukraine or surrounding region, should be regularly updating their trade control compliance programs and screening procedures to ensure that i) any direct or indirect involvement of newly sanctioned individuals and entities is detected and addressed, and ii) transactions with non-designated entities and individuals are not undertaken that violate the sectoral sanctions.

In addition to Canadian sanctions, Canadian companies are also cautioned to consider the extraterritorial application of the US economic sanctions against Russia on their Canadian operations and business decisions. US sanctions can apply to Canadian individuals and companies in certain cases – and the incidence of such applications is expanding.<sup>1</sup>

Since February 24, 2022, Canada has introduced twelve rounds of sanctions that are primarily implemented under the *Special Economic Measures (Russia) Regulations* (Russia Regulations). The respective regulations can be found here and follow our prior article on this topic here.

### **BANS & PROHIBITIONS**

#### **Prohibitions Against Dealings with Designated Persons**

The Russia Regulations establish a list of designated persons considered to be engaging in or supporting activities that directly or indirectly facilitate, support, provide funding for, or contribute to the deployment of Russian forces in Ukraine. As of the date today's date, section 3 of the Russia Regulations, prohibits Canadian companies and citizens from engaging in or facilitating a wide range of activities involving

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approximately 839 individuals and 239 entities currently listed in Schedule 1 of the Russia Regulations.

Schedule 1 includes Russian President Vladimir Putin and family members, elites and close associates of the regime, Russia's Security Council, Duma members, and disinformation agents.

Individuals and entities have been added to Schedule 1 not only because of their relationship President Putin and the invasion, but also to target direct and indirect dealings with entities in the following sectors of the Russian economy which include a number of shipbuilding, aeronautics, and other defence enterprises, as well as research institutions and government agencies including the Foreign Intelligence Service.

1. **Russian foreign reserves** including National Wealth Fund of the Russian Federation, Central Bank of the Russian Federation, Ministry of Finance of the Russian Federation
2. **Russian state-owned entities** including Gazprombank, Russian Agricultural Bank, Gazprom, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, Russian Railways, and Credit Bank of Moscow
3. **Russian banks and financial institutions**<sup>2</sup> including Russia's largest financial institution (Sberbank) and its largest private bank (Alfa Bank), as well as their subsidiaries Vnesheconombank (VEB) and Promsvyazbank (PSB) and 42 of their subsidiaries, Otkritie, Sovcombank and Novikombank (and their subsidiaries worldwide), and VTB Bank PJSC (VTB), Russia's second-largest bank, and 20 of its subsidiaries
4. **Financial, admiralty, shipyard, energy** entities including Rosneft, Gazprom and United Aircraft Corporation
5. **Financial services sector** entities including Company of the Russian Direct Investment Fund JSC, RVC Management Company LLC, Russian Agricultural Bank JSC, Investtradebank JSC
6. **Defence sector** entities, including a variety of tactical missile production, radio-communications, and ship maintenance facilities -70 entities are targeted including the State Corporation Rostec, which has been described as the cornerstone of Russia's defense sector as well as 29 Russian individuals

A complete list of sanctioned individuals and entities can be found here.

Persons in Canada and Canadians outside of Canada are prohibited from engaging in a range of activities directly or indirectly with designated entities and individuals. These include:

1. Dealing in any "property,"<sup>3</sup> wherever situated, that is owned, held, or controlled by or on behalf of a designated person. It is important to note that Canada does not have the same 50 Percent Rule<sup>4</sup> as the US Department of the Treasury's Office of Foreign Assets Control (OFAC) in determining ownership and control, so that even a minority interest by a designated person in a non-designated entity may result in a Canadian company being prohibited from dealing with that entity
2. Entering into or facilitating, directly or indirectly any transaction related to such dealings
3. Providing any financial or other related service in respect of such dealings

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4. Making goods, wherever situated, available to them or a person acting on their behalf
5. Providing any financial or financial-related service to or for their benefit

Doing anything that causes, assists, or promotes these activities is also prohibited.

The prohibitions in respect of Schedule 1 designated persons do not expressly extend to their subsidiaries but Canadian businesses engaging in transactions with entities that have a connection to a designated person will need to assess carefully the impact of the connection on compliance with the prohibitions.

There are a number of exemptions to the dealings prohibitions, including a grandfather provision which allows for payments made by or on behalf of designated persons that are due under contracts entered into before they become designated persons provided that such payments are not made for the benefit of designated persons.

Sections 3.1 and 3.2 of the Russia Regulations impose prohibitions on dealing with debt and equity in relation to a small number of entities listed in Schedules 2 and 3 which currently include the Bank of Moscow, OAO Novatek, and OJSC Surgutneftegas. These are narrower restrictions than those contained in section 3, which prohibit most activities involving Schedule 1 persons.

## **Gold Import Ban (Effective July 8, 2022)**

To further limit Russia's ability to raise funds to wage war, Canada and its allies including the US have agreed to a ban on the purchase of newly mined and refined gold from Russia. Effective July 8, 2022, the Regulations prohibit any person in Canada and any Canadian outside Canada from importing, purchasing, or acquiring gold products<sup>5</sup> from Russia or from any person in Russia.

## **Mining, Oil, Gas and Chemical Industries Services Ban (Effective June 7, 2022)**

In an effort to further isolate the Russian economy by targeting services that are key to Russian companies and elites building wealth, effective June 7, 2022, the Russia Regulations now prohibit the export of 28 services to Russia for the operation of oil, gas, and chemical industries, including technical, management, accounting, computer, and advertising services. Canada's service ban targets only these three industries in contrast to the US whose services ban extends to all industries but to fewer services.<sup>6</sup>

Section 3.10 of the Russia Regulations broadly prohibits "any person in Canada and any Canadian outside Canada to provide to Russia or to any person in Russia any service referred to in Part 1 of Schedule 8 'in

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relation to' any industry referred to in Part 2 of that Schedule.”

The affected industries referred to in Part 2 of Schedule 8 are (i) mining of coal and lignite, (ii) extraction of crude petroleum and natural gas, (iii) mining of metal ores, (iv) other mining and quarrying, (v) mining support service activities, (vi) manufacturing of coke and refined petroleum products, and (viii) manufacturing of chemicals and chemical products.

The services ban referred to in Part 1 of Schedule 8 captures common services such as management consulting services, accounting, auditing and bookkeeping services, R&D services, advertising, construction work, engineering services, and computer and related services. As specific to the oil and gas sector, banned services include the bulk storage of liquids and gases, the transportation of petroleum and natural gas, retail sales of fuel oil, bottled gas, coal, and wood, and the wholesale trade services of solid, liquid and gaseous fuels and related products. “Services incidental to mining” and “services incidental to energy distribution” are also captured within the scope of prohibited activities.

It is important to note that the services ban extends to Canadian companies and individuals providing services to Russia or persons in Russia from anywhere in the world, and not just from Canada.

On July 9, 2022, Canada announced that it intends to expand the existing sanctions on the oil, gas, and chemical sectors to include industrial manufacturing. Together, these sectors represent more than 50% of Russia’s federal budget revenues. Canada’s new sanctions will “prohibit Canadian services to contribute to the production of goods [in the metals, transport, computer, electronic and electrical, and machinery] sectors.” The news release provides that: “Once the measures are in effect, Canadian businesses will have 60 days to conclude contracts with targeted industries and services.

## **Petroleum Products Import Ban (Effective March 10, 2022)**

The Regulations impose a broad prohibition against the import, purchase, or acquisition by persons in Canada or Canadians outside of Canada of the following categories of petroleum products (listed in Schedule 5), including crude oil, located *anywhere* in the world, from any person in Russia.

- Petroleum oils and oils obtained from bituminous minerals, crude (HS<sup>7</sup> 2709);
- Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils (HS 2710); and
- Petroleum gases and other gaseous hydrocarbons (HS 2711).

## **Insurance-Related Prohibitions in Aviation and Aerospace (Effective April 5, 2022)**

Individuals in Canada are henceforth prohibited from providing insurance, reinsurance, and underwriting services for Russian aviation and aerospace products. Section 3.7(1) prohibits any person in Canada and any Canadian outside Canada from providing insurance or reinsurance to or for the benefit of Russia or any person in Russia in relation to any good described in Chapter 88 (aircraft, spacecraft, and parts thereof) of the Harmonized Commodity Description and Coding System, or in relation to technology for a good described in that chapter.

## **Supply Ban on Restricted Goods and Technologies (Effective March 6, 2022)**

In an effort to deny Russia access to goods and technology that could benefit their military, the Russia Regulations prohibit the export or supply of “restricted goods and technologies” to Russia and persons in Russia, including electronics, telecommunications equipment, sensors and lasers, navigation and avionics equipment, marine equipment, aerospace and transportation products. These goods and technologies are listed in the Restricted Goods and Technologies List (the List)<sup>8</sup> published by Global Affairs Canada.

This prohibition is subject to several exceptions, including goods and technologies for use by the Government of Canada or a partner country listed in Schedule 6 of the Russia Regulations,<sup>9</sup> and for computers, mobile phones, televisions, and other “consumer communication devices” generally available to the public.

Section 3.6 broadly prohibits any person in Canada and any Canadian outside Canada from exporting, selling, supplying, or shipping any good on the List, wherever situated, “to Russia or to any person in Russia.” There is also a prohibition against providing to Russia or to any person in Russia any technology that is described on the List.

The prohibition applies to all exports, sales, supplies, and shipments of items on the List from anywhere in the world to Russia or to any person in Russia. Canadian entities and individuals involved in supplying or transferring goods, services or technologies to Russia or persons in Russia will be captured within the scope of this sanctions measure even if the transactions do not involve any exports from Canada.

## **Prohibition on Supply of Goods That Could Be Used for Manufacture of Weapons (Effective May 18, 2022)**

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The Russia Regulations contain a broad supply prohibition on the export of 60 categories of various goods that *could* be used for weapons manufacturing. The export, sale, supply, or shipment of any good referred to in Schedule 7, wherever situated, to Russia or to any person in Russia is now prohibited.

Schedule 7 lists 60 diverse categories of goods, including medical devices such as X-rays or artificial respiration or other therapeutic respiration apparatuses, measuring instruments, photographic equipment, thermostats, ships, boats, and floating structures, unmanned aircrafts, vehicles, electrical machinery, industrial robots, equipment used in construction, metals and scrap metals, pumps, etc. Notably, it does not appear necessary that these items be specially designed for weapons production or military use in order to be subject to the supply ban.

## **Prohibitions on Advanced Goods and Technologies (Effective June 27, 2022)**

In an effort to further limit the development of Russia's domestic defence manufacturing capability, section 3.6 of each of the Russia Regulations which prohibits the export, sale, supply, or shipment of any good or technology described in the List, was amended to apply to additional goods and technologies with defence capabilities, especially in relation to missiles and missile-control systems, as set out in Schedule 5.1<sup>10</sup> to the Russia Regulations.

## **Shipping Prohibitions (Effective March 6, 2022)**

The shipping sector is fundamental to international trade in a global economy including Canada's. The Russia Regulations prohibit ships registered in Russia or used, leased, or chartered (in whole or in part) by, on behalf of, or for the benefit of Russia, a designated person, or any person in Russia from docking in Canada or passing through Canada.<sup>11</sup> This prohibition aligns Canadian policy on the sanctions against Russian shipping with measures already taken by the United Kingdom, the US, and the European Union.

## **Luxury Goods Prohibitions (Effective July 17, 2022)**

Canada and its G7 allies have introduced sanctions in relation to the trade in luxury goods with the intention of focusing on items that will impact Russian oligarchs and other members of the Russian elite.

Persons in Canada or Canadians outside Canada are prohibited from exporting, selling, supplying, or shipping 257 goods (including alcoholic beverages, tobacco and cigarettes, cosmetics, handbags, fur skins,

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fabrics, textile products including carpets, sportswear, footwear, luxury clothing and accessories, jewelry, kitchenware, vehicles) identified in Part 1 of Schedule 6, wherever situated, to Russia or to any person in Russia. They also prohibit persons in Canada and Canadians outside Canada from importing, purchasing, or acquiring 26 goods (including seafood items, liquor, diamonds) identified in Part 2 of Schedule 6, wherever situated, from Russia, or from any person in Russia. The prohibition is not limited to exports and imports but rather extends to the supply or sourcing of these products anywhere in the world to or from “Russia or any person in Russia.”

## Oil Exploration and Production Prohibition (Effective December 19, 2014)

Section 3.3 of the Russia Regulations continues to prohibit persons in Canada and any Canadian outside Canada from exporting, selling, supplying or shipping any goods listed in column 1 of Schedule 4, wherever situated, to Russia or to any person in Russia for use in any of the following activities:

- offshore oil exploration or production at a depth greater than 500 metres;
- oil exploration or production in the Arctic; or
- shale oil exploration or production.

Also prohibited is the provision to Russia or to any person in Russia of any financial, technical, or other services related to the prohibited goods.

The prohibited goods fall within various codes under Chapters 73, 82, 84, 87, and 89 of the Harmonized System, and include certain line pipe, drill pipe, tubing, casing, rock-drilling and earth-boring tools; pumps, liquid elevators, boring and sinking machinery, mobile drilling derricks, floating or submersible drilling or production platforms, fire-floats, lightships and floating docks or cranes.<sup>12</sup>

## COMPLIANCE

It is a criminal offence in Canada to willingly contravene the *Special Economic Measures Act*. Contraventions are punishable by significant fines, imprisonment, or both. Moreover, even an allegation of a violation, may significantly harm the reputation on any organization.

## Reporting Obligations

Canadian financial institutions and other financial service providers have a “duty to determine,” which requires these institutions to determine, on a continuing basis, whether they are in possession or control of property owned or controlled by or on behalf of a listed person.

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In addition, any person in Canada and Canadian outside Canada must disclose without delay to the RCMP or the Canadian Security Intelligence Service any: (i) property in their possession or control that they have reason to believe is owned or controlled, directly or indirectly, by a listed person or by an entity owned or controlled by a listed person, and (ii) information about a transaction or proposed transaction in respect of such property.

## Facilitation

Under Canadian sanctions legislation it is an offence to do anything that, directly or indirectly, causes, facilitates, promotes, or assists in a prohibited activity. This could include financial or technical assistance, advisory services, or other activities. When a corporation develops a sanctions compliance framework and controls, care must be exercised to detect and prevent any corporate activities that engage sanctions law prohibitions indirectly.

## Permits

Unlike the United States, Canada does not have general licences to permit an activity prohibited under the Russia Regulations. Under the *Special Economic Measures (Russia) Permit Authorization Order*, the Minister of Foreign Affairs may issue a permit, upon application, to authorize certain specified activities or transactions that are otherwise prohibited under the Russia Regulations.

## KEY TAKEAWAYS

As the sanctions and restrictions outlined in this article come into effect, and additional sanctions are announced and implemented worldwide, Canadian entities should anticipate any business with Russian entities will be increasingly limited. It is expected that even if a transaction is not subject to sanctions, major financial and insurance institutions may decide not to support it. Now is the time to conduct thorough diligence of all operations and counterparties to determine where Russian touchpoints exist and take steps to address those points applying to the Minister of Foreign Affairs for a permit to proceed with the otherwise prohibited transaction, halting certain operations, winding down within the specified periods, or considering alternative or backup operations in the face of additional sanctions that are being announced daily.

Cassels continues to closely follow developments in this area and assess the impact on Canadian and non-Canadian businesses operating in Canada and abroad.



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<sup>1</sup> Canadian companies can also be exposed to US sanctions for (1) taking actions within the US; (2) providing material support or assistance to or facilitating a significant transaction with US persons to violate US sanctions; (3) activities that occur in the US (e.g., processing sanctioned country transactions through the US financial system); or (4) undertaking transactions that violate specific US policy goals and thereby becoming a sanctioned person under US laws.

<sup>2</sup> Canada and the other G7 countries also expelled several Russian banks from the SWIFT payment messaging system.

<sup>3</sup> "Property" is broadly defined to include "any type of property, whether real or personal or immovable or movable, or tangible or intangible or corporeal or incorporeal, and includes money, funds, currency, digital assets and virtual currency."

<sup>4</sup> OFAC's 50 Percent Rule states that the property and interests in property of entities directly or indirectly owned 50 percent or more in the aggregate by one or more blocked persons are considered blocked.

<sup>5</sup> Subject gold products are: Gold, non-monetary, unwrought, powder (HS 710811); Gold, non-monetary, semi-manufactured forms, other than powder (710813); Gold, non-monetary, unwrought, other than powder (HS 710812); Gold, monetary, unwrought or in semi-manufactured forms, or in powder form (HS 710820); and articles of jewelry and parts thereof, of precious metal other than silver, whether or not plated or clad with precious metal (HS 711419).

<sup>6</sup> Effective June 7, 2022, OFAC's order pursuant to Executive Order 14071 prohibits "the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of accounting, trust and corporate formation, and management consulting services to any person located in the Russian Federation."

<sup>7</sup> "HS" refers to the subheading under the Schedule to the Canadian Customs Tariff.

<sup>8</sup> The List includes equipment and components, and related software and technology, such as: electronic equipment, devices and components; specific processing and testing equipment; "program" proof and validation "software," "software" allowing the automatic generation of "source codes," and operating system "software" specially designed for "real-time processing" equipment; telecommunication equipment; marine or terrestrial acoustic equipment; optical sensors and filters; lasers; "magnetometers", "superconductive" electromagnetic sensors; radar systems; navigation equipment; vessels, marine systems or equipment; aircrafts and gas turbine engines; software and technology for the "development," "production," or "use" of the above.

<sup>9</sup> The countries listed under Schedule 6 include NATO, the US, EU and other states which have coordinated their sanctions measures imposed on Russia in response to Russia's invasion of Ukraine.

<sup>10</sup> Schedule 5.1 includes: Equipment, electronic assemblies and components, specially designed for quantum computers, quantum electronics, quantum sensors, quantum processing units, qubit circuits, qubit devices or quantum radar systems; cryogenic refrigeration systems designed to maintain temperatures below 1.1 kelvin for 48 hours or more and cryogenic refrigeration equipment and components therefor; ultra-high vacuum equipment; high quantum efficiency photodetectors with a quantum efficiency greater than 80% in the wavelength range exceeding 300 nanometres but not exceeding 1700 nanometres; certain additive manufacturing equipment and vat photopolymerization additive manufacturing equipment; scanning electron microscopes, scanning auger microscopes, transmission electron microscopes, atomic force microscopes and scanning force microscopes, and related equipment and detectors; decapsulation equipment for semiconductor devices; and certain software and technology related to the above.

<sup>11</sup> There is a narrow exception in cases where docking or passage is necessary to safeguard human life or to ensure navigational safety.

<sup>12</sup> Also listed in Schedule 4 are parts for a wide range of equipment and machinery that could be used for the three activities identified above, including parts for the following: lifting, handling, loading or unloading machinery; derricks, cranes, mobile lifting frames and other lifting machinery; self-propelled bulldozers, scrapers, graders, levellers, shovel loaders and tamping machines; other moving, grading, scraping, levelling, excavating and extracting machinery, and hydraulic or self-propelled boring or sinking machines.

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*This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.*