

Cassels

Ongoing Impact of Canadian Sanctions Against Russia – as of February 28, 2023

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In response to the ongoing Russian invasion of Ukraine, Canada has continued to ratchet up its economic sanctions against Russia,¹ Belarus,² and the occupied regions of Ukraine.³

A listing of the additional sanctions introduced since the publication of our last update on July 18, 2022, is set out below.

Additional Designated Persons

Canadians in Canada and abroad and Canadian corporations are prohibited from dealing in or facilitating the dealing in property owned, held, or controlled by or on behalf of designated persons listed in the schedules to the regulations enacted under the *Special Economic Measures Act* (SEMA).⁴

On February 24, 2023, Canada announced additional amendments to the *Special Economic Measures (Russia) Regulations* (SEMA (Russia) Regulations). These amendments list an additional 129 individuals and 63 entities under Schedule 1 of these SEMA (Russia) Regulations.

There are now over 2100 individuals and entities listed in the schedules to the SEMA (Russia) Regulations, the *Special Economic Measures Act (Ukraine) Regulations*, and the *Special Economic Measures (Belarus) Regulations*.

Companies are reminded that there is an obligation on persons in Canada and Canadians to disclose property held by designated persons or any related transactional information to the RCMP. Additionally, certain financial institutions and entities have a continuing duty to determine and disclose property held by designated individuals and entities.

Sourcing Ban on Gold Products

Section 3.11 of the SEMA (Russia) Regulations, prohibits any person in Canada or Canadian outside of Canada from importing, purchasing, or acquiring the gold products listed in the new Schedule 9 from Russia or any person in Russia.

Oil and Petroleum Prohibitions Continue with the Addition of A Petroleum Price Cap

The SEMA (Russia) Regulations currently prohibit Canadians and persons in Canada from importing Russian crude and petroleum products and from supplying any goods or technology to Russia that can be used in oil exploration or production. Canadians are also prohibited from supplying various services to the Russian petroleum industry.

Canada in coordination with its allies signed and implemented a price cap mechanism on Russian-origin crude oil and petroleum products. In effect, service providers will only be permitted to continue transacting in seaborne Russia crude oil and petroleum products so long as these products are sold at or below an agreed-upon price ceiling set out in the G7+ Coalition Oil Price Cap List.⁵

On December 7, 2022, Canada further amended the SEMA (Russia) Regulations to prohibit persons in Canada and Canadians outside Canada from providing specified marine transportation services (i.e. financing, shipping, re/insurance, customs brokering, flagging, protection/indemnity, trading and commodities brokering), including ship-to-ship transfers of specified petroleum and petroleum products, if those products are:

- exported from Russia or originate in Russia;
- are purchased above the price set out for those goods in the G7+ Coalition Oil Price Cap List; and
- if the service relates to sea, costal or inland water transport generally, or to passenger or freight transport industries as defined by Division 50 of the *International Standard Industrial Classification of All Economic Activities*, Revision 4, published by the United Nations in 2008.

As of February 5, 2023, the maximum price for seaborne Russian-origin petroleum products will be US\$100 per barrel for “premium-to-crude” products, and US\$45 for “discount-to-crude” petroleum products.⁶

Global Affairs Canada has announced that these two additional price caps will be enforced in the same manner as the crude oil price cap: by prohibiting buyers who do not abide by the price caps from obtaining services, like shippers’ insurance, from companies in any of the Coalition countries (G7 partners and Australia).

Section 3.12(4) of the SEMA (Russia) Regulations provides that the cap does not apply in respect of goods imported into the Republic of Bulgaria, the Republic of Croatia or a landlocked European Union member state if the importation is permitted under *Council Regulation (EU) 2022/879 of June 3, 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine*.

Prohibitions on Dealings in the “Occupied Areas” of Ukraine

SEMA (Ukraine) Regulations now prohibit the vast majority of any business dealings in an “occupied region,” of Ukraine. The “occupied regions” are (a) the so-called Donetsk People’s Republic and the territory it controls in the Donetsk oblast of Ukraine; (b) the so-called Luhansk People’s Republic and the territory it controls in the Luhansk oblast of Ukraine; (c) the area of the Kherson oblast of Ukraine that is illegally occupied by the Russian Federation; and (d) the area of the Zaporizhzhia oblast of Ukraine that is illegally occupied by the Russian Federation.

It is prohibited for Canadians to:

- (a) make an investment that involves a dealing in any property located in an occupied region that is owned — or that is held or controlled, directly or indirectly — by a person in an occupied region;
- (b) provide or acquire financial or other related services with respect to an investment referred to in paragraph (a);
- (c) import, purchase or acquire goods, wherever situated, from a person in an occupied region;
- (d) export goods destined for an occupied region or sell, supply or transfer goods, wherever situated, to any person in an occupied region;
- (e) provide technical assistance to a person in an occupied region;
- (f) provide financial or other services related to tourism to, or acquire such services from, a person in an occupied region; or
- (g) dock a cruise ship in an occupied region that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament.

“Control” Test is a De Facto One

Canadian companies continue to grapple with the issue of whether Canadian economic sanctions prohibit them from engaging in dealings involving entities that are owned or controlled by persons designated under the Canadian sanctions legislation.

On October 25, 2022, the Court of King’s Bench of Alberta issued a decision in the case of *Angophora Holdings Limited v. Ovsyankin*, 2022 ABKB 711 which attempted to cast some light on the judicial interpretation of the control provisions in the sanctions legislation. The Court held that a *de facto* control analysis is appropriate in Canada. Hopefully, further judicial guidance will be issued in 2023 given the lack of any administrative guidance from Global Affairs Canada on the control issue.

New Seizure and Forfeiture Mechanism Targets Assets of Held by

Sanctioned Persons in Canada

The SEMA has been amended to provide for the Governor in Council to make an order restraining or seizing property situated in Canada that is owned, held, or controlled directly or indirectly by or on behalf of a foreign state, any company in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada. The Minister of Foreign Affairs (Minister) may then apply to a superior court to seek forfeiture of the restrained or seized property. Provided the court determines that the property is described in the order seizing or restraining the property and that it is owned, held or controlled, directly or indirectly, by the person referred to in the order, the judge must issue the forfeiture order.⁷ Once forfeited, the Minister may liquidate the property and use the proceeds for the reconstruction of a foreign state adversely affected by a grave breach of international peace and security, the restoration of international peace and security, and the compensation of victims.

Late last year, the Minister announced that Canada would be undertaking the necessary steps to seize and forfeit assets of approximately US\$26 million held by Granite Capital Holdings Ltd. a company allegedly owned by the Russian oligarch Roman Arkadyevich Abramovich (“Abramovich”) who is listed as a designated person under the SEMA (Russia) Regulations. The announcement indicated that the proceeds would be used to compensate victims of the war in Ukraine and help in the reconstruction of the country.⁸ On December 21, 2022, the Governor-in-Council ordered Citco Bank Canada to restrain US\$26 million believed to be owned, held, or controlled by Abramovich.⁹ The next step is for the Minister to submit a court application for an order that the funds be forfeited.

Looking Forward in 2023

The Canadian sanctions against Russia, Belarus and the occupied regions of Ukraine will continue to escalate and broaden their reach. Companies are well advised to keep abreast of ongoing developments in order to mitigate their exposure to the risks associated with the ongoing escalation of sanctions against Russia by authorities in multiple jurisdictions.

¹ SEMA (Russia) Regulations <https://laws.justice.gc.ca/eng/regulations/SOR-2014-58/FullText.html>

² SEMA (Belarus) Regulations <https://laws.justice.gc.ca/eng/regulations/SOR-2020-214/FullText.html>

³ SEMA (Ukraine) Regulations <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-60/FullText.html>

⁴ Special Economic Measures Act <https://laws-lois.justice.gc.ca/eng/acts/S-14.5/>

⁵ https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/g7-coalition-oil_price-prix_petrole.aspx?lang=eng

⁶ https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/response_conflict-reponse_conflits/crisis-crisis/ukraine-sanctions.aspx?lang=eng

⁷ During this process, however, the court may hear from any person who, in the court's opinion, appears to have an interest or right in the property.

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⁸ <https://www.canada.ca/en/global-affairs/news/2022/12/canada-starts-first-process-to-seize-and-pursue-the-forfeiture-of-assets-of-sanctioned-russian-oligarch.html>

⁹ <https://orders-in-council.canada.ca/attachment.php?attach=42985&lang=en>

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