



Focus on Sanctions and The Sergei Magnitsky Law: Strategies to Ensure Compliance with the Current Economic Sanctions Regime

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Five Pillars of Canada's Economic Sanctions Regime

- Special Economic Measures Act and United Nations Act include:
 - ban on providing goods, services, technology
 - assets freezes – cannot deal with listed individuals, companies, organizations
 - ban on facilitation
 - monitoring and reporting obligations

- Freezing Assets of Corrupt Foreign Officials Act
 - Ukraine and Tunisia

- new Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)

- Criminal Code – terrorist groups

Economic Sanctions: Jurisdictions of Concern

Burma/Myanmar

Central African Republic

Democratic Republic of Congo

Eritrea

Iran

Iraq

Lebanon

Libya

Mali

North Korea

Russia

Somalia

South Sudan

Sudan

Syria

Tunisia

Ukraine (including Crimea)

Venezuela

Yemen

Zimbabwe

Canada's Economic Sanctions Regime

- key elements
 - applies to persons in Canada and Canadians outside Canada
 - permits administered by Global Affairs Canada
 - enforcement by RCMP and CBSA (detention and seizure at border)
 - “knowingly” or “wilfully”
 - criminal penalties
 - fines in an amount that is appropriate in the opinion of the Court
 - up to 10 years imprisonment
 - operational and reputational costs

Challenges with Economic Sanctions

- measures take effect immediately – no consultations
- measures change often, in response to developing international events
- measures are “layered”
 - multiple Canadian regulatory regimes
 - measures in the country in which you’re doing business
 - US extraterritorial measures

Five Key Sanctions Issues for Canadian Companies

- ↪ rise of targeted or “smart” sanctions
- ↪ application to entities owned or controlled by sanctioned (listed) persons
- ↪ lack of guidance from authorities
- ↪ increasing disconnect with US and other sanctions regimes
- ↪ the sanctions screening deficit

Rise of Targeted or “Smart” Sanctions

- designated or listed individuals and entities, and the entities they own or control, regardless of where you are or they are
 - country sanctions regulations (UNA and SEMA)
 - Al-Qaeda and Taliban (UNA)
 - Criminal Code – terrorist entities
 - October 2017 Magnitsky Law and changes to Special Economic Measures Act
 - involvement in gross violations of human rights
 - significant corruption
- continuing determination and periodic reporting to financial regulator
 - March 4, 2019 changes to OSFI, OSC reporting obligations
- mandatory disclosure to RCMP or CSIS

Owned or Controlled by Listed Persons?

- application to entities owned or controlled by listed or designated persons under sanctions measures and impact on due diligence
- prohibition against, for example, dealing “in any property, wherever situated, that is owned, held or controlled by a listed person or by a person acting on behalf of a listed person”
- US 50% rule for Specially Designated Nationals
- no public clarification from the Canadian government but...

Lack of Guidance from Canadian Government

- significant differences in Canadian administration and guidance on economic sanctions vs the United States and other countries
 - no FAQs, guidelines, rulings, opinions
 - limited consolidation of blacklists
 - no formal voluntary disclosure process
 - no deferred or non-prosecution agreements

Lack of Guidance from Canadian Government

- key recommendations of Canada's House of Commons Foreign Affairs Committee in April 2017 Magnitsky Report
 - properly resource and reform the structures for sanctions regimes
 - comprehensive, publically available, written guidance for public and private sectors regarding interpretation of sanctions regulations
 - produce and maintain a comprehensive, public and easily accessible list of all individuals and entities targeted by Canadian sanctions containing all information necessary to assist with proper identification
 - independent administrative process by which designated individuals and entities can challenge in a transparent and fair manner
 - clear rationale for the listing and delisting of persons

Lack of Guidance from Canadian Government

- changes are coming...
 - funds repeatedly committed in Federal Budget
 - August 2018 - new Global Affairs Canada Division: “Sanctions Policy & Ops Coordination”
 - separate from the “United Nations, Human Rights, and Economic Law” section of Legal Affairs
 - anticipated consultations

Increasing Disconnect With US Sanctions

- ↪ Canadian sanctions can be more aggressive than those of the United States or European Union

- ↪ increasing differences – no longer moving in lockstep
 - ↪ Iran – JCPOA
 - ↪ Russia
 - ↪ different blacklists

- ↪ blocking orders – prohibiting compliance with US sanctions measures
 - ↪ Cuba
 - ↪ Iran

The Canadian Sanctions Screening Deficit

- prohibition against dealings involving designated or listed persons
- screen for any involvement in the activity – customer, borrower, ultimate user, agent, vendor, creditor, broker, service provider, research partner, collaborator
 - and the individuals and entities that own or control them
- limited consolidation of lists by Canada
- practical necessity of using a third party screener
 - due diligence on screener

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