

Article

New Sanctions Measures Prohibit Dealings With Corrupt Foreign Officials

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Canada has implemented new economic sanctions measures targeting activities involving certain “politically exposed foreign persons”. The measures prohibit dealing directly or indirectly in any property of such persons, entering into or facilitating a related financial transaction, and providing financial services or other related services in respect of such property. The [Freezing Assets of Corrupt Foreign Officials \(Tunisia and Egypt\) Regulations](#) provide for specific measures to be taken against former Tunisian and Egyptian leaders and senior officials, and their associates and family members, suspected of misappropriating state funds or obtaining property inappropriately.

Persons in Canada and Canadians outside Canada are subject to broad prohibitions and other requirements concerning the property of politically exposed foreign persons. All companies doing business internationally should be reviewing and revising their sanctions compliance policies, including their screening lists, to reflect these new obligations under Canadian law.

The Freezing Assets of Corrupt Foreign Officials Act

The [Freezing Assets of Corrupt Foreign Officials Act](#) (“FACFOA”) provides the Canadian government with the authority to freeze the assets or restrain the property of politically exposed foreign persons at the written request of a foreign state, where it has been determined that the foreign state is in a state of turmoil or political uncertainty, and where the making of such an order or regulation is in the interest of international relations.

“Politically exposed foreign persons” are defined to mean persons who hold or have held certain identified offices or positions in or on behalf of a foreign state. They can include heads of state, members of legislatures, deputy ministers, ambassadors, military officers, presidents of state-owned companies or banks, heads of government agencies, judges, or political party leaders. They can also include any person who, for personal or business reasons, is or was closely associated with such persons, including family members.

The FACFOA provides that wilful contravention of its provisions or an order or regulation made pursuant to it is a summary conviction or indictable offence that is punishable with imprisonment for up to five years and/or a fine of up to \$25,000.

Measures Targeting Tunisia and Egypt

On March 23, 2011, the [Freezing Asset of Corrupt Foreign Officials \(Tunisia and Egypt\) Regulations](#) came into force. They specifically target dealings involving former leaders of Tunisia and Egypt, including family members and associates, listed by name in Schedules 1 and 2 to the Regulations. The Regulations specifically prohibit persons in Canada from engaging in the following activities:

(i) dealing, directly or indirectly, in property, wherever situated, of a listed person;

- (ii) entering into or facilitating, directly or indirectly, any financial transaction related to such a dealing;
or
- (iii) providing financial services or other related services in respect of any property of a listed person.

Other Key Elements

Other key elements of the new sanctions against politically exposed foreign persons include the following:

- (i) **Duty to Report** – persons in Canada and Canadians outside Canada must, without delay, disclose to the Royal Canadian Mounted Police (a) the existence of property in their possession or control that they have reason to believe is the property of any listed politically exposed foreign person and (b) information about a transaction or a proposed transaction in respect of such property;
- (ii) **Duty To Determine** – financial institutions have a specific obligation to determine on a continuing basis whether they are in possession or control of property that they have reason to believe is property of listed politically exposed foreign persons;
- (iii) **Relief from Civil Liability** – provided one acts reasonably in taking or omitting to take measures to comply with an FACFOA order or regulation, one will not be held liable in any civil action if all reasonable steps to satisfy oneself that the property was property that is subject to the order or regulation were taken;
- (iv) **Permits** – Canada's Minister of Foreign Affairs may issue permits allowing for certain activities or transactions, or classes of activities or transactions, to proceed that would otherwise be prohibited; and
- (v) **Duration** – orders or regulations issued in respect of politically exposed foreign persons cease to have effect after five years, although this period may be extended more than once.

Canadian firms, especially financial institutions, should be carefully reviewing these new measures to ensure that they are in full compliance with the rules governing dealings involving politically exposed foreign persons. At a minimum, this should include a thorough review of existing business activity as well as ongoing screening of future transactions to identify any potential compliance issues.

Canada's Economic Sanctions

At the present time, in addition to these new measures regarding politically exposed foreign persons, Canada currently imposes economic sanctions of varying degrees on activities involving any of the following countries: Belarus, Burma, Côte d'Ivoire, Democratic Republic of the Congo, Cuba, Eritrea, Iran, Iraq, Lebanon, Liberia, Libya, North Korea, Pakistan, Sierra Leone, Somalia, Sudan, Syria, and Zimbabwe.

McCarthy Tétrault's International Trade and Investment Law Group has extensive experience in dealing with these measures and is available to advise on related enforcement, compliance and strategic planning issues.