



# Stikeman Elliott Guide to Canada's Economic Sanctions and Anti-Terrorism Laws

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## Introduction

Economic sanctions and anti-terrorism laws are having increasing impact on day-to-day business operations for companies in many industries and have also become an important area of diligence for equity transactions and financings. All companies with a nexus to Canada should be aware of these laws and their responsibilities thereunder and take appropriate risk-based steps directed towards compliance.

Canada has a broad range of economic sanctions and anti-terrorism laws targeting certain foreign states and some of their nationals, as well as various terrorist organizations. These laws are generally stated as being binding on individuals and entities when in Canada as well as on Canadian citizens and Canadian-incorporated businesses when they are or are operating outside Canada. These laws prohibit dealings with designated individuals, entities or organizations and in some cases have sector-specific or country or region-specific prohibitions or other limitations such as export controls in addition to those under the Export and Import Permits Act. They often impose reporting obligations regarding property of designated persons and in some cases impose periodic screening and reporting obligations on regulated financial institutions and other businesses.

This article provides an overview of Canada's economic sanctions and anti-terrorism laws and a summary of potential measures that businesses can implement to enhance their compliance regime.

## Compliance with Canadian Economic Sanctions and Anti-Terrorism Laws

Canada's economic sanctions and anti-terrorism laws are binding on all individuals and entities when in Canada as well as on Canadian citizens when they are outside Canada and Canadian-incorporated businesses operating outside Canada. Therefore, compliance with these laws should be addressed by all businesses with a nexus to Canada. It is increasingly becoming the market approach in diligence for financing and mergers and acquisitions for companies to be asked about their compliance with Canada's economic sanctions and anti-terrorism laws. As it can be difficult for companies to recognize specific situations in which compliance risk may arise, it is becoming increasingly important, as the standard practice continues to evolve, that companies screen the names of all of their contractual counterparties, whether they be customers, suppliers, agents or otherwise. There are a number of tools that companies can use to screen, including third-party screening services.

Beyond screening, companies that do business with individuals or entities in high-risk jurisdictions (*i.e.*, countries/regions subject to comprehensive sanctions such as North Korea and the Crimea region of Ukraine) should consider the risk of violations and whether the commercial and reputational risk of doing business in these jurisdictions is worth it. Business in these jurisdictions, even if no sanctions are violated, could cause difficulties with banks, investors or potential acquirors.

A strong compliance program that takes a company's responsibilities under Canada's economic sanctions and anti-terrorism laws into account may assist the company in avoiding fines, criminal penalties and reputation damage. A compliance program may also be of assistance as a possible defence or mitigating factor in the case of an inadvertent violation.

## Overview of Canadian Economic Sanctions and Anti-Terrorism Laws

Canada's economic sanctions and anti-terrorism laws are implemented and administered under five statutes:

- The *United Nations Act* (the "**UN Act**"): Canada enacts into Canadian law sanctions adopted by the United Nations ("**UN**") Security Council, including the UN suppression of terrorism sanctions and sanctions against the Taliban, ISIL (Da'esh) and Al-Qaida, through regulations made under the UN Act.
- The *Special Economic Measures Act* ("**SEMA**"): The Government of Canada has authority under SEMA to impose sanctions on foreign jurisdictions and persons in circumstances including where the government is of the opinion that a grave breach of international peace and security has occurred that is likely to result in a serious international crisis.
- The *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* (the "**Sergei Magnitsky Law**"): The [Sergei Magnitsky Law](#) authorizes the Government of Canada to designate foreign nationals who, in the government's view, are responsible for, or complicit in, gross violations of internationally recognized human rights. A designation under the Sergei Magnitsky Law may also be made in respect of foreign public officials (or their associates) who, in the Canadian government's view, are responsible for, or complicit in, acts of significant corruption.
- The *Criminal Code*: Part II.1 of the *Criminal Code* prohibits dealing in property of terrorist groups, including certain entities identified in the *Regulations Establishing a List of Entities*. The *Criminal Code* imposes specific reporting requirements and asset freeze obligations relating to terrorist property. It also sets out several offences relating to money laundering and the financing of terrorism.
- The *Freezing Assets of Corrupt Foreign Officials Act* ("**FACFOA**"): FACFOA permits the Government of Canada to make orders directing that the property in Canada of a politically exposed foreign person (PEFP) be seized, frozen or sequestered when there is internal political turmoil in a foreign state. Technically these are not economic sanctions; they are intended to assist foreign governments recovering the proceeds of corruption engaged in by their citizens. That said, from a compliance perspective FACFOA requirements are similar to the requirements under economic sanctions laws. FACFOA allows the government to make orders restricting the dealings with designated PEFPs. The powers under FACFOA are in addition to, and should not be confused with, the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("**PCMLTFA**") relating to enhanced due diligence for PEFPs.

While there are variations amongst particular regulations, economic sanctions imposed under the authority of the UN Act, SEMA and the Sergei Magnitsky Law generally include prohibitions on:

- Dealing in property that is owned or controlled by a designated person;
- Entering into or facilitating any financial transaction related to such a dealing;
- Providing or acquiring any financial or other related service in respect of such property;
- Making any property or financial service available to a designated person; and
- Causing, facilitating or assisting in any of the prohibited activities.

Certain regulations under SEMA also include arms embargoes or sector specific trade restrictions.

In relation to Russia and Belarus, the Canadian government has implemented new types of sanctions pursuant to SEMA, some of which go back to Russia's 2014 annexation of Crimea, but the majority of which have been implemented in response to Russia's invasion of Ukraine, which began in February 2022. These new types of sanctions include:

- A ban on Russian-owned or registered ships and fishing vessels from Canadian ports and internal waters;
- A ban on the import, purchase or acquisition of any petroleum or related oils or petroleum gas or related gases from Russia;
- Prohibitions on exporting, selling, supplying or shipping any goods on the [Restricted Goods and Technology List](#) or to provide any technology on that list to Russia or Belarus;
- A prohibition on the provision of insurance and reinsurance for Russian and Belarusian aircraft;
- A ban on the export and import of luxury goods (the definition of which is very broad) to or from Russia or Belarus;
- A ban on the export, sale, supply or shipment of goods for the manufacture of weapons to Russia or Belarus;
- A ban on the provisions of certain services to certain Russian industries, including the mining, oil & gas, chemical sectors as well as certain manufacturing industries; and
- A ban on the import of certain gold products from Russia.

The descriptions of the products, services and industries implicated in these prohibitions are technical and reference should be made to the *Special Economic Measures (Russia) Regulations* or the *Special Economic Measures (Belarus) Regulations* (as applicable) to determine if any particular product, service or industry is subject to a prohibition.

The *Special Economic Measures (Ukraine) Regulations* include a complete embargo on all imports from and exports to the Crimea region, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic of Ukraine.

Though there are some exceptions, regulations under the UN Act generally include the following measures imposed by the UN Security Council:

- A prohibition on the export of arms and related materiel to any person in the sanctioned country;
- A prohibition on the provision of technical and financial assistance related to military activities to any person in the sanctioned country;
- An asset freeze on designated persons;
- A travel ban against designated persons; and
- Causing, facilitating or assisting any of the prohibited activities.

## Countries Targeted by Sanctions or Other Measures

The chart below indicates the countries that Canada has currently imposed sanctions or other measures on or in relation to pursuant to the UN Act, SEMA, the Sergei Magnitsky Law, and FACFOA.

Country	UN Act	SEMA	Sergei Magnitsky Law	FACFOA
Belarus		<input checked="" type="checkbox"/>		
Central African Republic	<input checked="" type="checkbox"/>			
Democratic Republic of the Congo	<input checked="" type="checkbox"/>			
Iran	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Iraq	<input checked="" type="checkbox"/>			
Lebanon	<input checked="" type="checkbox"/>			
Libya	<input checked="" type="checkbox"/>			
Mali	<input checked="" type="checkbox"/>			
Myanmar		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Nicaragua		<input checked="" type="checkbox"/>		
North Korea	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>1</sup>		
People's Republic of China		<input checked="" type="checkbox"/>		
Russia		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Saudi Arabia			<input checked="" type="checkbox"/>	
Somalia	<input checked="" type="checkbox"/>			
South Sudan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Sudan	<input checked="" type="checkbox"/>			
Syria		<input checked="" type="checkbox"/>		
Tunisia				<input checked="" type="checkbox"/>
Ukraine <sup>2</sup>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Venezuela		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Yemen	<input checked="" type="checkbox"/>			
Zimbabwe		<input checked="" type="checkbox"/>		

<sup>1</sup> The *Special Economic Measures (DPRK) Regulations* include a complete embargo on all imports from and exports to North Korea.

<sup>2</sup> Linked to Russia's ongoing violations of Ukraine's sovereignty and territorial integrity.

For the scope of the sanctions and measures imposed on a particular country or citizens thereof, please refer to the relevant regulations.

## Anti-Terrorism Measures

Canada has implemented measures to suppress international terrorism under three complementary listing mechanisms: the *Regulations Implementing the United Nations Resolutions on the Taliban, ISIL (Da'esh) and Al-Qaida* under the UN Act, the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* under the UN Act, and Part II.1 of the Criminal Code. Together these mechanisms include the following measures:

- A prohibition on the export of arms and related material or explosives to any designated person;
- A prohibition on the provision to any designated person of any technical assistance related to the provision, manufacture, maintenance or use of arms and related material or explosives;
- A prohibition on providing or collecting funds with the intention that the funds be used, or in the knowledge that the funds are to be used, by a designated person;
- An asset freeze against any designated person;
- Causing, assisting or promoting any of the prohibited activities.

The lists established under these three mechanisms include terrorist entities as well as some individuals.

## Penalties and Contravention

Violating Canada's economic sanctions and anti-terrorism laws is a criminal offence for both companies and individuals (including employees of companies that violate these laws). The maximum penalties under the five statutes are shown in the table below.

	UN Act	SEMA	Sergei Magnitsky Law	Criminal Code	FACFOA
Summary Conviction Offence <sup>3</sup>	<b>Fine:</b> \$100,000 <b>Prison Term:</b> One year	<b>Fine:</b> \$25,000 <b>Prison Term:</b> One year	<b>Fine:</b> \$25,000 <b>Prison Term:</b> One year	<b>Fine:</b> \$100,000 <b>Prison Term:</b> Two years less a day	<b>Fine:</b> \$25,000 <b>Prison Term:</b> One year
Indictable Offence	<b>Fine:</b> In the discretion of the court <b>Prison Term:</b> Ten years	<b>Fine:</b> In the discretion of the court <b>Prison Term:</b> Five years	<b>Fine:</b> In the discretion of the court <b>Prison Term:</b> Five years	<b>Fine:</b> In the discretion of the court <b>Prison Term:</b> Ten years	<b>Fine:</b> In the discretion of the court <b>Prison Term:</b> Five years

In addition to these penalties, a violation, or even an allegation of a violation, may significantly harm the reputation of any individual or organization.

<sup>3</sup> Note that pursuant to section 735(1) of the *Criminal Code*, a corporation that is convicted of a summary conviction offence may be fined up to \$100,000 in lieu of imprisonment.

## Exemptions

Many of the regulations under the UN Act and SEMA include exemptions which allow certain activities that might otherwise fall within the scope of the prohibitions.

While specific exemptions vary in each regulation, exemptions under the UN Act regulations generally include:

- Export/provision of supplies intended solely for the support of certain regional or international operations in a sanctioned country;
- Export/provision of supplies of non-lethal military equipment intended solely for humanitarian or protective use;
- Export/provision of protective clothing solely for personal use by UN personnel, representatives of the media and humanitarian and development workers and associated personnel; and
- Export/provision of arms and related material and technical assistance intended solely for support of or use by UN missions or certain governments.

Certain regulations under the UN Act provide that the Minister of Foreign Affairs may issue a certificate to authorize an activity otherwise restricted by the regulations. Approval of the UN Security Council is a potential requirement to obtain such a certificate. The regulations respecting Libya, Iran and Sudan include mechanisms for affected persons to apply for such a certificate.

Regulations under SEMA generally include the following exemptions, although specific exemptions vary between regulations:

- Payments made by or on behalf of a listed person pursuant to contracts entered into prior to the coming into force of the regulations, provided that the payments are not made to a listed person or to a person acting on behalf of a listed person;
- Transactions necessary for a Canadian to transfer to a non-listed person any accounts, funds or investments of a Canadian held by a listed person on the day on which that person became listed;
- Dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, or with a listed person before that person became a listed person, and for enforcement and realization of security in respect of those loans, or repayments by guarantors guaranteeing those loans;
- Pension payments to any person in Canada or any Canadian outside Canada;
- Financial services required in order for a listed person to obtain legal services in Canada with respect to the application of any of the prohibitions set out in these regulations;
- Transactions in respect of accounts at financial institutions held by diplomatic missions, provided that the transaction is required in order for the mission to fulfill its diplomatic functions under the Vienna Convention on Diplomatic Relations, or transactions required in order to maintain the mission premises if the diplomatic mission has been temporarily or permanently recalled;
- Transactions with any international organization with diplomatic status, agencies of the UN, the International Red Cross and Red Crescent Movement, or with any entity that has entered into a grant or contribution agreement with Global Affairs Canada; and
- Transactions by the Government of Canada that are provided for in any agreement or arrangement between Canada and the government of a sanctioned country.

Separate regulations under SEMA authorize the Minister of Foreign Affairs to issue to any person in Canada, or any Canadian outside Canada, a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is otherwise restricted or prohibited pursuant to the SEMA regulations. Each country sanctioned under SEMA has a corresponding Permit Authorization regulation.

Similarly, a separate regulation under the Sergei Magnitsky Law authorizes the Minister of Foreign Affairs to issue permits and general permits to persons in Canada, or Canadians outside Canada, to carry out a specified activity or transaction, or class of activity or transaction, that is otherwise prohibited under the Sergei Magnitsky Law or its regulations.

Permits may be difficult or even impossible to obtain in many cases.

### **Forfeiture Regime for Assets of Foreign Nationals of Sanctioned Countries**

Bill C-19, the *Budget Implementation Act, 2022, No. 1*, which received royal assent on June 23, 2022, amended SEMA and the Sergei Magnitsky Law to establish a forfeiture regime for assets of foreign nationals. Each statute now gives the Cabinet (Canada's executive government) the authority to make an order causing to be seized or restrained any property in Canada that is owned or is held or controlled, directly or indirectly, by a foreign national of a jurisdiction in respect of which Canada has enacted sanctions. A court is then required to make an order forfeiting such property on application by the applicable Minister where a two-part test is satisfied:

- The property that is the subject of a forfeiture application is described in an order of Cabinet as described above made under the applicable statute; and
- The property that is the subject of a forfeiture application is owned by the foreign national referred to in the Cabinet order or is held or controlled, directly or indirectly, by that foreign national.

The court hearing the application is required to give notice to any person who appears to have an interest in or right to the property and then can hear from any such person before making an order of forfeiture. Any person who claims an interest in property that is the subject of an order of forfeiture has 30 days after the order is made to apply for an order that their right or interest would not be affected by the order and directing the applicable Minister to pay to that person an amount equal to the value of their interest.

In the case of SEMA, the applicable Minister can pay the net proceeds from the disposition of forfeited property to:

- The reconstruction of a foreign state adversely effected by a grave breach of international peace and security;
- The restoration of international peace and security; and/or
- The compensation of victims of a grave breach of international peace and security, gross and systemic human rights violations or acts of significant corruption.

In the case of SEMA, the applicable Minister can pay the net proceeds from the disposition of forfeited property to:

- Gross violations of internationally recognized human rights; and/or
- Acts of significant corruption.

## Screening and the Duty to Determine

Canada's economic sanctions and anti-terrorism laws generally impose a screening obligation on certain entities, including federally regulated financial institutions and provincially regulated securities dealers and portfolio managers. These entities 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, any person designated under any of Canada's economic sanctions laws.

If one of these entities determines that a person or entity in its records is a designated person, it must determine whether it is in possession or control of "property" of a designated person as defined in Canada's economic sanctions and anti-terrorism laws. The definition of "property" varies, but typically has a very broad scope.

There is no single consolidated list of all entities designated under Canada's sanctions laws. Therefore, companies must ensure that they check all relevant lists when conducting sanctions screening or use a reputable third-party screening service that checks all relevant lists.

## Reporting Obligations

Canada's economic sanctions and anti-terrorism laws impose a number of reporting requirements. Certain of these reporting requirements are not limited to the entities that have screening obligations.

All persons in Canada and all Canadians outside Canada must freeze and report without delay to the RCMP or CSIS any property of a designated or related person, identified as a result of screening or otherwise, that is in their possession.

Regulated financial institutions are also required to disclose to their principal federal or provincial regulator, whether they are in possession or control of property of a person designated under the *Criminal Code* regulations or the Sergei Magnitsky Law regulations. The number of persons or contracts involved and the total value of the property must be reported. Under the *Criminal Code*, reports must be made monthly. If no such property is detected, a nil report must be sent to the principal regulator. Under the Sergei Magnitsky Law regulations, a report is required only where a regulated financial institution detects such property, and subsequent reports regarding any such property must be made every three months thereafter.

Federally regulated financial institutions must file reports with OSFI according to OSFI's instructions for using OSFI Form 525 (for the *Criminal Code*) or OSFI Form 590 (for the Sergei Magnitsky Law regulations).

Institutions subject to the PCMLTFA must also make a report to the Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**") consistent with FINTRAC's guidance on submitting terrorist property reports if they are required to make a disclosure under the *Criminal Code* list or the UN Act suppression of terrorism regulations.



## Recent Developments

The Canadian government updates the lists of designated persons under economic sanctions and anti-terrorism laws and implements new sanctions quickly in response to developments around the world.

In response to Russia's invasion of Ukraine, the government has enacted, and continues to enact, substantial additional sanctions on Russia and Belarus. For more information, see Shawn Neylan's series of blog posts on [The Competitor](#).

Canada imposed its first sanctions against China in March 2021 in coordination with the United States and the United Kingdom, and in solidarity with the European Union. At the time of writing, the list of designated persons under the SEMA regulation in respect of China is quite limited, but it could be expanded by the government at any time.

While there have been few investigations that have resulted in a conviction for a violation of Canada's economic sanctions and anti-terrorism laws, compliance with these prohibitions is increasingly being examined in commercial relationships and in diligence for equity or lending transactions.

*Please do not hesitate to contact us if you have any questions about Canada's economic sanctions and anti-terrorism laws.*



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