

CANADA MODIFIES BELARUS SANCTIONS AND INTRODUCES EFFICIENCIES TO REPORT REQUIREMENTS UNDER SERGEI MAGNITSKY LAW

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Modified Belarus Sanctions

On August 9, 2021, the Canadian government announced modified sanctions against Belarus under the *Special Economic Measures Act* [1] (“SEMA”), targeting activities related to transferable securities and money market instruments, debt financing, insurance and reinsurance, petroleum products, and potassium chloride. A detailed discussion on the latter components of these measures is available in [our bulletin from earlier this month](#).

The sanctions are applicable to Belarus, Belarusian banks, organizations controlled by Belarus, or persons acting on behalf of such entities (each, a “**Belarus Entity**”), and supplement the sanctions initially announced in September 2020. Seeking to apply pressure on high-ranking Belarusian officials, such as President Lukashenko, the Canadian government has imposed the sanctions as a direct acknowledgement of the “ongoing, gross and systematic violations of human rights in Belarus,” attempting to minimize Belarusian state actors’ access to international finance.[2]

Under the sanctions, all individuals and businesses in Canada, as well as Canadian citizens and Canadian-incorporated businesses operating outside of Canada, are prohibited from:

- dealing in transferable securities and money market instruments, including treasury bills, certificates of deposit and commercial papers but not including instruments of payment, issued by a Belarus Entity;
- providing debt financing or otherwise dealing in debt[3] of longer than 90 days’ maturity in relation to a Belarus Entity;
- providing insurance or reinsurance to a Belarus Entity; and
- importing, purchasing, acquiring, shipping or otherwise dealing with any petroleum products and potassium chloride that is exported from Belarus.

In order to ensure compliance, companies, investment funds and fund managers with connections to Belarus

should review their existing controls and procedures, and consider implementing proactive measures to preclude activities that would violate the aforementioned prohibitions. Failure to comply with a sanction order can result in a \$25,000 fine or up to five years of imprisonment, pursuant to section 8 of SEMA.

Amended Reporting Requirements Under the Sergei Magnitsky Law

A change in the reporting requirements for financial institutions, securities dealers and advisers was announced in an amendment to subsection 7(1) of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*^[4] (“SML”), which statute originally came into force on June 29, 2021.

The amendment provides that a report under the SML is only required upon determination of possession or control of any property of a foreign national. The disclosure must be reported to the principal regulator without delay and every three months thereafter. Accordingly, the prior requirement to prepare and file a nil report every month has been repealed. We believe this will be a welcome change for market participants as it will increase efficiencies and avoid unnecessary and unhelpful reporting. Updates to OSFI Form 590 (for OSFI-regulated financial institutions), the Canadian Securities Administrators’ monthly sanctions report guide and the instructions issued by the Investment Industry Regulatory Organization of Canada are anticipated as a result of the foregoing.

All registered dealers, advisers and firms relying on the international dealer or international adviser exemption under Canadian securities laws should ensure their policies and procedures have been updated to reflect the amended reporting obligations. Notwithstanding the foregoing, entities subject to SML should continue to monitor their activities to determine whether they are in possession or control of property that it has reason to believe is the property of a foreign national.

It is worthy to note that monthly reports, including nil reports, regarding property of designated terrorist groups continue to be required under the *Criminal Code*. This federal statute should be referenced for more information on offences related to terrorist activities and money laundering.

If you have any questions regarding the changes or reporting obligations discussed above, we encourage you to contact any one of the members of McMillan’s Investment Funds and Asset Management Group who would be pleased to speak with you at your convenience.

[1] Global Affairs Canada, [Regulations Amending the Special Economic Measures \(Belarus\) Regulations](#)

[2] Global Affairs Canada, News Release, August 9, 2021, [Canada imposes additional sanction on first anniversary Belarus’s fraudulent presidential elections](#).

[3] Including bonds, loans, debentures, extensions of credit, loan guarantees, letters of credit, bank drafts, bankers’ acceptances, discount notes, treasury bills, commercial paper and other similar instruments.

[4] Justice Laws Website, [Amendment Citation](#)

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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