

EMERGENCY ORDER – IMPACT ON INSURERS

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Today, the Government of Canada released regulations made pursuant to the *Emergencies Act* following its declaration of the *Emergency Economic Measures Order* (the “**Order**”) on February 14, 2022. The Order applies to numerous financial institutions, including:

- authorized foreign banks under the *Bank Act*;
- credit unions under the *Cooperative Credit Associations Act*;
- companies, foreign companies, and societies under the *Insurance Companies Act*;
- trust and loan companies; and
- companies that facilitate electronic transactions specified in the Order.^[1]

Among other things, the Order provides that these entities must cease:

- a. dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;
- b. facilitating any transaction related to a dealing referred to in paragraph (a);
- c. making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or
- d. providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.^[2]

Such entities must also determine on a continual basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a designated person.^[3]

As set out in the Emergency Measures Regulations (the “Regulations”), a designated person includes anyone participating in, or travelling to a public assembly that may reasonably be expected to lead to a breach of the peace by (i) the serious disruption of the movement of persons or goods or the serious interference with trade; (ii) the interference with the functioning of critical infrastructure; or (iii) the support of the threat or use of acts of serious violence against persons or property.^[4]

Insurers should note that their obligations under (d) above do not apply in respect of insurance policies which were valid before the Order, unless those policies are for any vehicle being used in a public assembly, as

described above.

It is important to note that the immunity against civil proceedings for complying with the Order does not appear to extend to any entities other than corporations, trusts, partnerships, funds, unincorporated associations or organizations and foreign states. However, any person who suffers loss, injury or damage as a result of anything done or purported to be done under the Regulations may make an application for compensation in accordance with Part V of the *Emergencies Act*.

Unfortunately, no guidance has yet been provided by the Office of the Superintendent of Financial Institutions to assist insurers and other federally regulated financial institutions with the implementation of these new measures.

All entities potentially affected by the Order should review its detailed provisions and obtain legal advice where appropriate.

McMillan Vantage Policy Group is available to provide support and strategic public affairs strategy for organizations impacted by these complex and evolving issues.

[1][ps2id id='1' target=''] *Emergency Economic Measures Order, SOR/2022-22, s.3.*

[2][ps2id id='2' target=''] *Ibid, s.2.*

[3][ps2id id='3' target=''] *Ibid, s.3.*

[4][ps2id id='4' target=''] *Emergency Economic Measures Order, SOR/2022-22, s.1; Emergency Measures Regulations, SOR/2022-21, ss. 2-5.*

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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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