

# STAYING OUT OF THE CROSSHAIRS – KEEPING ON TOP OF RUSSIA RELATED ECONOMIC SANCTIONS

*Posted on November 21, 2014*

**Categories:** [Insights](#), [Publications](#)

As tensions mount in Eastern Ukraine, companies doing business in Russia and the Ukraine are bracing for a new wave of economic sanctions from Canada, the United States and the European Union.

The impact of these sanctions is not inconsequential. Russia is a major trading partner for many Western countries. Canada, for example, sent merchandise to Russia totaling CAD \$1.4 Billion, with the top exports in the following sectors: animal products; aerospace products; mining, oil and gas; and machinery and equipment.<sup>[1]</sup>

## What are Economic Sanctions?

Economic sanctions are laws, regulations or directives adopted by countries that prohibit certain dealings with targeted countries. The economic sanctions adopted by the EU, Canada and the US create criminal offences<sup>[2]</sup> and are interpreted broadly to include both direct and indirect dealings. They also capture facilitation, promotion or assistance of activities which are prohibited by the sanctions.

The conduct prohibited by economic sanctions generally falls into three categories.

1. Export prohibitions that prohibit a person or company in Canada, the US or EU from exporting, selling, supplying or shipping certain goods and services, wherever situated, to Russia or to a designated person or entity in Russia.
2. Prohibitions on dealing with certain designated persons that appear on lists created by Canada, the US and EU (which often overlap). The list of prohibited dealings that appear on the "designated persons" type of sanctions is specific to each jurisdiction, but it can include any dealings with the property of the sanction targets or it can be restricted to certain financial dealings.
3. Prohibitions aimed at certain sectors which prohibit the sale of goods, services or technology used in a certain economic sector of the targeted country.

Canadian, American and EU companies and individuals are expected to be aware of economic sanctions and to ensure compliance. Companies must continuously monitor the status of the sanction lists so that internal trade

control compliance programs and screening procedures are updated to reflect the most current sanctions.

This is easier said than done. Sanctions are liable to change without notice. The Russia-related sanctions have been amended and added-to several times since they first were put in place in March 2014. Moreover, sanctions are typically drafted in urgent circumstances, such that their wording is not always as clear as it could be. What follows is a description of the state of Canadian Russia-related sanctions as of the date of publication, as well the counterpart sanctions put in place by the US and EU.

## **Canadian Economic Sanctions**

### *Sanctions against targeted individuals or entities*

As detailed in the July 18, 2014 McMillan bulletin [Canada, US and the EU Expand Their Lists of Economic Sanctions against Russia and the Ukraine](#), the first set of sanctions adopted by Canada included broad-based sanctions aimed at certain individuals and entities.

The Canadian economic sanctions impose criminal liability against Canadian persons and companies in Canada and abroad from engaging in the following activities with the designated persons and entities found in Schedule 1 of the *Special Economic Measures (Russia) Regulations*<sup>[3]</sup> (the "Russia Sanctions"):

- dealing in any property, wherever situated, held by them or on their behalf;
- facilitating or providing financial or other related services in respect of such a dealing;
- making any goods, wherever situated, available to them;
- providing any financial or related services to or for their benefit; and
- causing, assisting or promoting any of the above prohibited activities.

### *Asset freezes and financings with certain Russian entities and individuals*

On July 24, 2014, Canada significantly strengthened its economic sanctions regime against Russia by amending its Russia Sanctions to include sweeping financial prohibitions against "new debt financing" and "new equity financing" in relation to certain listed entities:

- The prohibition against [new debt financing](#)<sup>[4]</sup> prohibits any person in Canada and any Canadian outside Canada to transact in, provide or otherwise deal in a loan, bond or debenture, of longer than 30 days' maturity in relation to a person listed in Schedule 2 and 90 days' maturity in relation to a person listed in Schedule 3, or their property or interests in property. This prohibition does not apply in respect of a loan that was made or a bond or debenture that was issued before the person was listed in Schedule 2 or 3.
- The prohibition against [new equity financing](#)<sup>[5]</sup> prohibits any person in Canada and any Canadian outside Canada to transact in, provide or otherwise deal in capital funding through the transaction of

shares in exchange for an ownership interest in relation to a person listed in Schedule 2 or their property or interests in property. This prohibition does not apply to capital funding that occurred before the person was listed in Schedule 2.

As a result of the July 24, 2014 changes, Canada's Russia Sanctions now contain 3 separate schedules of listed entities. Each schedule prohibits a specific kind of dealing with the entities listed on that Schedule, requiring enhanced monitoring of the sanctions lists.

#### *Impending Energy Sanctions*

There remains the possibility that the Government of Canada will follow the lead of the US and EU and impose export controls on technologies in the energy sector. On August 6, 2014, the Prime Minister issued a statement<sup>[6]</sup> that specifically mentioned the possibility of energy sector sanctions. To date, these have not been put in place.

#### *Canada Ceases Export Assistance for Canadian Exports to Russia*

In response to Canada's strengthened sanctions against Russia, Export Development Canada ("EDC") has closed all of its financing programs in relation to Russia and has stated its position that EDC is "not pursuing business at this time" with the Russian Federation.<sup>[7]</sup>

EDC is Canada's export credit agency which provides financial services to Canadian companies who conduct export and investment activities abroad.<sup>[8]</sup> EDC has regional representation in Moscow and a working relationship with OAO Gazprom Neft, however as of September 2014, EDC has closed its programs with Russia.

### **Russia Related Sanctions from the US and the EU**

#### *Sanctions against targeted individuals or entities*

The US and the EU's first sanctions also included broad-based sanctions aimed at certain individuals and entities. The US began sanctioning entities as early as March 20, targeting Bank Rossiya<sup>[9]</sup> and Crimea-based gas company Chernomorneftegaz,<sup>[10]</sup> and has rapidly expanded its blocked person list to include several other banks, energy companies and defence firms. The EU sanctioned individuals connected to the conflict in Ukraine beginning on March 17, 2014<sup>[11]</sup> and started listing sanctioned entities on May 12, 2014;<sup>[12]</sup> the EU's list of sanctioned persons and entities has also significantly expanded since then.

The US economic sanctions target all property and interests in property of the listed persons that are or will come within the United States, or within the possession or control of any United States person (including any foreign branch). This property or interest in property is prohibited from being transferred, paid, exported, withdrawn, or otherwise dealt in. The prohibitions also include the making of any contribution or provision of

funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked, and the receipt of any contribution or provision of funds, goods, or services.<sup>[13]</sup>

The EU sanctions freeze the funds and economic resources belonging to, owned, held or controlled by listed persons, as well as the natural and legal persons, entities or bodies associated with them, prohibiting the "funds or economic resources" being "made available, directly or indirectly, to or for the benefit of" the listed persons. This EU sanctions apply within the territory of the EU (including its airspace); on board any aircraft or any vessel under the jurisdiction of a Member State; to any person inside or outside the territory of the Union who is a national of a Member State; to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; or to any legal person, entity or body in respect of any business done in whole or in part within the Union.<sup>[14]</sup>

#### *Oil, gas and mining activities that have the potential to produce oil in Russia*

The US and the EU have imposed measures sanctioning support of Russian exploration and production of deepwater, Arctic offshore, or shale projects that have the potential to produce oil in Russia.

These measures expand upon the energy export control sanctions imposed by the EU and the US. The creation of export controls to Russia is an important development as it indicates a shift away from solely targeting companies and individuals, to also targeting certain products sold to Russians dealing in prohibited sector.

On July 31, 2014 the EU published a directive (which took effect August 1),<sup>[15]</sup> which prohibits the sale, supply, transfer or export, directly or indirectly, of technologies listed in Annex II to the directive, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or in any other country, if such equipment or technology is for use in Russia. The Annex II technologies include certain technologies suited to the oil industry.

On August 6, 2014, the US announced that it was following the lead of the EU and imposing export control sanctions on goods used in the oil and gas sector. The US sanctions apply to the re-export or transfer (in-country), without an export license, of any listed items when the exporter, reexporter or transferor knows or is informed that the item will be used directly or indirectly in Russia's energy sector.<sup>[16]</sup>

#### *Asset freezes and financing of Russia entities*

The US and EU sanctions, in addition to the previous asset freeze sanctions, tighten the new debt and equity financing prohibitions imposed against Russian banks by limiting the maturity period from 90 days to 30 days.<sup>[17]</sup> These measures are drafted with the intention of diminishing Russia's ability to expand its oil and gas industry and limiting Russia's ability to borrow money.

## Conclusion

The scope of sanctions against Russia is constantly evolving. It is unlikely that the Russia related sanctions will be lifted soon. To the contrary, economic sanctions have become the weapons of choice in the "cool war" now developing between western countries and Russia. In fact, indications are that Canada, the US and the EU will soon add to the already expansive list of sanctions. As result, companies dealing in geopolitical hotpots such as Russia and Ukraine need to continue to be vigilant to keep on top of the in's and out's of economic sanctions regimes to ensure that their dealings are not offside.

by Martin G. Masse and Monica Podgorny

[1][ps2id id='1' target=''] Export Development Canada, "*Country Overview: Russia*" (June 2014).

[2][ps2id id='2' target=''] For example, contravention of Canadian economic sanctions may result in summary or indictable criminal convictions with penalties resulting in fines and/or imprisonment of up to 5 years.

[3][ps2id id='3' target=''] SOR/2014-58.

[4][ps2id id='4' target=''] s. 3.1.

[5][ps2id id='5' target=''] s. 3.2.

[6][ps2id id='6' target=''] Prime Minister of Canada Stephen Harper, "*Statement by the Prime Minister of Canada announcing additional sanctions*" (6 August 2014).

[7][ps2id id='7' target=''] Export Development Canada, "*Russian Federation*".

[8][ps2id id='8' target=''] *Export Development Canada*.

[9][ps2id id='9' target=''] U.S. Department of the Treasury, "*Treasury Sanctions Russian Officials, Members Of The Russian Leadership's Inner Circle, And An Entity For Involvement In The Situation In Ukraine*", (20 March 2014), Press Center.

[10][ps2id id='10' target=''] U.S. Department of the Treasury, "*Ukraine-related Designations*" (11 April 2014), Resource Center.

[11][ps2id id='11' target=''] Official Journal of the European Union, Council Regulation (EU) No 269/2014 (17 March 2014).

[12][ps2id id='12' target=''] Official Journal of the European Union, Council Implementing Regulation (EU) No 477/2014 (12 May 2014).



[13][ps2id id='13' target=''] *Executive Order 13660—Blocking Property of Certain Persons Contributing to the Situation in Ukraine*, 79 Fed Reg 13494 (2014).

[14][ps2id id='14' target=''] *Supra* note 11.

[15][ps2id id='15' target=''] Official Journal of the European Union, Council Regulation (EU) No 833/2014 (31 July 2014).

[16][ps2id id='16' target=''] Federal Register, "[Russian Oil Industry Sanctions and Addition of Person to the Entity List](#)" (6 August 2014).

[17][ps2id id='17' target=''] US Department of the Treasury, "[Ukraine-related sanctions](#)" (12 September 2014); Official Journal of the European Union, Council Regulation (EU) No 960/2014 (8 September 2014).

### **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.

© McMillan LLP 2014