

International **Comparative** Legal Guides



Sanctions **2021**

A practical cross-border insight into sanctions law

Second Edition

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ISBN 978-1-83918-072-9
ISSN 2633-1365

Published by

glg global legal group

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Printed by

Ashford Colour Press Ltd.

Cover image

www.istockphoto.com

Strategic Partners



International Comparative Legal Guides

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Canada has a broad range of sanctions targeting foreign states and their nationals, as well as various terrorist organisations.

Canadian sanctions laws apply to all individuals and businesses in Canada and to all Canadian citizens and Canadian-incorporated businesses operating outside Canada. They prohibit dealings with designated persons or within targeted sectors of specified foreign jurisdictions, and impose screening, reporting, and asset-freeze obligations on regulated financial institutions and other businesses. Canadian sanctions may also include prohibitions against buying, selling or shipping identified goods to or from a targeted country. In some cases, Canadian sanctions include arms embargos to prevent weapons and military equipment from leaving or reaching a targeted country, and prohibitions against providing technical assistance related to the banned products or arms. Canadian sanctions laws encompass resolutions passed by the United Nations (UN), as well as other restrictive measures that Canada, alone or in cooperation with its international partners, has imposed on foreign jurisdictions or groups.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

Global Affairs Canada, Public Safety Canada and the Department of Justice Canada administer and enforce Canada's sanctions regime.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

Effective June 1, 2020, the Government of Canada amended several regulations made under the United Nations Act, to extend prohibitions against providing financial or related services to a designated person to include a prohibition against *acquiring* such services from a designated person. The amendments also extend the scope of the sanctions against Al-Qaida and Taliban to explicitly include reference to ISIL (Da'esh). Sanctions against North Korea were also amended to, among other things, include a prohibition on knowingly selling, leasing or otherwise making available real property to North Korea, a

national or any person acting on behalf or at the direction of North Korea or a national. The purpose of this change was to prevent the use of such property by North Korea to generate income for its nuclear and ballistic missile programmes.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Canada is required to implement sanctions imposed by the United Nations Security Council (UNSC) under Chapter VII of the Charter of the United Nations. These sanctions are enacted into Canadian law by regulations made under the United Nations Act.

Absent a United Nations Security Council resolution, Canada also has authority to impose sanctions autonomously by adopting regulations under the Special Economic Measures Act (SEMA), the Freezing Assets of Corrupt Foreign Officials Act (FACFO Act), the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law, or SML) and the Criminal Code.

Canada may adopt sanctions under SEMA 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. SEMA also authorises regulations to implement a decision of an international organisation (other than the UN) of which Canada is a member.

The FACFO Act 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. The FACFO Act also allows the Government of Canada to make orders restricting the dealings with designated PEFPs.

The Justice for Victims of Corrupt Foreign Officials Act authorises the Government of Canada to designate foreign nationals who, in the government's view, are responsible for, or complicit in, gross violations of internationally recognised human rights. A designation under SML may also be made in respect of foreign public officials (or their associates) who, in the government's view, are responsible for, or complicit in, acts of significant corruption.

The Criminal Code enables the Government of Canada to prohibit dealing in property of terrorist groups and impose reporting requirements and asset freeze obligations relating to terrorist property.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

The Government of Canada implements UN sanctions by enacting into Canadian law all sanctions adopted by the UNSC as regulations made under the United Nations Act. Currently, regulations under the United Nations Act impose sanctions in respect of the following jurisdictions: Central African Republic; Libya; Democratic Republic of the Congo; North Korea; Lebanon; Somalia; Iran; South Sudan; Iraq; Sudan; Mali; and Yemen. Two additional regulations made under the United Nations Act implement the UN suppression of terrorism sanctions and sanctions against Taliban, ISIL (Da'esh) and Al-Qaida.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

Canada is not a member of a regional body that issues sanctions, other than by way of Canada's participation in the G7.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Canada maintains several lists of sanctioned individuals and entities. Individuals and entities are added to or removed from these lists by regulation, except in respect of lists of individuals and entities designated under the UN Act, which are amended by resolutions adopted by the UNSC.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

An individual or entity listed in the regulations made under SEMA, SML, or the Criminal Code may apply in writing to have their name removed from the list. Applications are made to the Minister of Foreign Affairs for SEMA and SML, and the Minister of Public Safety and Emergency Preparedness for the Criminal Code.

2.6 How does the public access those lists?

Lists of individuals and entities designated under Canadian sanctions legislation are available to the public online. In recent years, the Government of Canada has made progress toward consolidating the lists of sanctioned persons designated under Canadian legislation. The Consolidated Canadian Autonomous Sanctions List maintained by Global Affairs Canada now comprehensively lists individuals and entities that are designated under SEMA and SML regulations. Public Safety Canada maintains a list on its website of terrorist persons designated under the Criminal Code regulations. Individuals designated under the FACFO Act are not currently included under any of the above consolidated lists, but lists of persons designated under this Act can be accessed through the regulations published on the website of the Department of Justice Canada. Canada does not maintain a list of the individuals and entities designated

under the United Nations Act, but the United Nations publishes a Consolidated United Nations Security Council Sanctions List on its website, and generally this list is referred to for all designations under the United Nations Act.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Canada's most comprehensive sanctions apply in respect of Crimea, Syria and North Korea.

Under SEMA, the Government of Canada has imposed broad sanctions against Russian businesses and individuals, as well as persons with connections to certain pro-Russian groups in Ukraine, including a broad prohibition against making investments in the Russian-controlled Crimea and providing related financial or other services.

Significant restrictions also exist in respect of Syria. The regulations prohibit, among other measures, the importing or shipment of any goods, other than food, from Syria. There is a prohibition on exporting to Syria and to any person in Syria any goods or data for use in monitoring telecommunications, luxury goods, and chemicals and products listed in the regulations. There are also significant restrictions on the provision of financial services, including prohibitions against:

- dealing in property held by or on behalf of persons designated under the regulations;
- providing or acquiring financial or related services involving the Government of Syria or any person in Syria, subject to certain threshold exceptions;
- providing or acquiring financial or related services for the purpose of facilitating trade in petroleum or related products, other than natural gas; and
- making investments in Syria and engaging in other prohibited conduct specified in the regulations.

The SEMA regulations in respect of North Korea impose sanctions in addition to those provided for under the United Nations Act. These include, among other measures, prohibitions against:

- providing or acquiring financial services involving the Government of North Korea or any person in North Korea, subject to threshold exceptions;
- making investments in any entity in North Korea;
- exporting, supplying or shipping any goods to North Korea or any person in North Korea and dealing in any goods destined for North Korea or any person in North Korea; and
- transferring or communicating technical data to North Korea or any person in North Korea and engaging in other prohibited conduct specified in the regulations.

Until 2016, Canada had in place an all-encompassing set of trade restrictions in respect of Iran. The Government of Canada lifted most (but not all) of these restrictions in February 2016 when the International Atomic Energy Agency confirmed that Iran satisfied the commitments it made under the Joint Comprehensive Plan of Action, a programme intended to ensure that the Iranian nuclear programme is not used for the development of nuclear weapons.

Canada has also imposed sectoral restrictions in respect of other jurisdictions.

2.8 Does your jurisdiction maintain any other sanctions?

Yes. In addition to the above jurisdictions, regulations under

SEMA apply in respect of Burma, Venezuela, Nicaragua, South Sudan, Ukraine, Zimbabwe and Libya.

Regulations under the United Nations Act impose sanctions in respect of the following jurisdictions: Central African Republic; Libya; Democratic Republic of the Congo; North Korea; Lebanon; Somalia; Iran; South Sudan; Iraq; Sudan; Mali; and Yemen. Two additional regulations made under the United Nations Act implement the UN suppression of terrorism sanctions and sanctions against Taliban, ISIL (Da'esh) and Al-Qaida.

Regulations under the FACFO Act target persons in Tunisia and Ukraine.

Designations under SML target nationals of Russia, Venezuela, South Sudan, Myanmar, and Saudi Arabia.

2.9 What is the process for lifting sanctions?

Where the Government of Canada determines to remove or amend sanctions made under SEMA, FACFO Act or SML, sanctions may be lifted by way of amendment to the regulations. Similarly, where sanctions imposed by the UNSC are amended or lifted, Canada will make corresponding amendments to the regulations made under the United Nations Act.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

The Export and Import Permits Act imposes export and import trade controls on specific goods or goods from certain jurisdictions. These controls have an impact on a wide range of cross-border shipments and transactions. The controls are implemented primarily through the following three lists:

- Area Control List (ACL).
- Export Control List (ECL).
- Import Control List.

The ACL is a list of countries to which the government has deemed it necessary to control the export of any goods. Currently, North Korea is the only jurisdiction listed in the ACL, and a permit is required to export goods to that country.

The ECL is a list of goods that the government has deemed necessary to control for certain enumerated purposes. For example, Canada closely controls the export of military goods and technology to countries that pose a threat to Canada and its allies, are involved in, or under imminent threat of hostilities, or are subject to UN Security Council sanctions. The ECL also controls the export of any U.S. origin goods, whether or not the goods are otherwise controlled by the ECL. A permit – whether a specific or general permit – is required to export or import goods identified on the ECL.

The Export and Import Permits Act also makes it an offence to aid or abet a person in engaging in an activity that contravenes the legislation.

The Prohibiting Cluster Munitions Act (PCMA) implements Canada's commitments under the Convention on Cluster Munitions, an international treaty addressing the humanitarian consequences of certain explosive munitions. The PCMA makes it an offence to possess, move, import or export cluster munitions, explosive submunitions and explosive bomblets, or aid another person in carrying out any of these acts.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

The Government of Canada has authority under the Foreign

Extraterritorial Measures Act (FEMA) to make orders protecting Canadian interests against the extraterritorial application of foreign laws in Canada. There are currently two blocking orders issued under FEMA.

First, the Foreign Extraterritorial Measures (United States) Order, 1992 (1992 Order) blocks the extraterritorial application in Canada of the U.S. embargo against Cuba. The 1992 Order prohibits a Canadian corporation, including its directors, officers, and employees, in respect of any trade between Canada and Cuba, from complying with an extraterritorial measure of the United States. The 1992 Order also prohibits complying with any direction or communication relating to such a measure that the Canadian corporation has received from a person who is in a position to influence the policies of the Canadian corporation. There is also an obligation to notify the Attorney General of Canada of any such communications.

Second, the Certain Foreign Extraterritorial Measures (United States) Order, 2014, prohibits any person in Canada from complying with U.S. "Buy America" requirements in relation to the redevelopment of premises in northern British Columbia that were leased by the State of Alaska.

The Canadian provinces of Ontario and Manitoba have each enacted a Discriminatory Business Practices Act, which prohibits persons in each of those provinces from engaging in certain discriminatory practices. This legislation was introduced in the 1980s in response to the Arab League boycott of Israel. The legislation prohibits a person from refusing to engage in a business activity with another person on account of nationality or the geographic location of the counterparty, among other grounds. There is also a prohibition against entering into any contract that includes a requirement that one of the parties to the contract will refuse to engage in business with any other person on the basis of such attributes. The legislation provides for mandatory reporting requirements when a person receives a request to participate in prohibited activities.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Not applicable. However, we note that Canadian-incorporated entities must comply with Canadian sanctions laws even where they are doing business outside of Canada.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

Canadian sanctions laws apply to all individuals and businesses in Canada and to all Canadian citizens and Canadian-incorporated businesses operating outside Canada.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes. Canadian sanctions laws generally prohibit dealing in property that is owned or controlled by persons designated under those laws.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Canadian sanctions legislation includes mechanisms for the Minister of Foreign Affairs to issue permits or certificates to authorise certain specified activities or transactions that are otherwise prohibited. Permits may be granted on an exceptional basis in respect of activities that are prohibited under SEMA or SML regulations. The United Nations Act regulations also authorise the Minister of Foreign Affairs to issue a certificate permitting a specified party to engage in an activity that is otherwise restricted.

In addition, the Minister of Public Safety and Emergency Preparedness may issue an authorisation under the Criminal Code permitting a person to carry out a specified activity or transaction that would otherwise be contrary to the prohibition against dealing in or providing services in respect of property of a terrorist group.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

There are a number of reporting requirements under the Canadian sanctions legislation:

First, any property of a designated or related person, identified as a result of screening or otherwise, must be frozen and reported without delay to the Canadian law-enforcement authorities. These obligations apply to all persons in Canada and all Canadians outside Canada.

Second, regulated financial institutions are also required to disclose, every month, 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 SML regulations.

Third, institutions subject to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act must also report matches with the Criminal Code list and designations under the United Nations Act suppression of terrorism regulations to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) consistently with FINTRAC's guidance on submitting terrorist property reports.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

For federally regulated financial institutions, the Office of the Superintendent of Financial Institutions (OSFI) published an Instruction Guide that sets out OSFI's expectations with respect to compliance with Canadian sanctions laws.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

It is a criminal offence in Canada to willingly contravene the Canadian sanctions legislation. Contraventions are punishable by significant fines, imprisonment, or both. Moreover, a

violation of the sanctions legislation, or even an allegation of a violation, may significantly harm the reputation on any organisation, particularly a financial institution.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The Royal Canadian Mounted Police and the Canadian Security Intelligence Service are responsible for investigating and the Public Prosecution Service of Canada is responsible for prosecuting criminal offences under Canadian sanctions laws.

4.3 Is there both corporate and personal criminal liability?

Yes, both individuals and entities may be liable for contravening Canadian sanctions legislation.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

The maximum fine for an individual or entity under the United Nations Act or the Criminal Code is CAD\$100,000. Under SML, SEMA and FACFO Act, the maximum fine is CAD\$25,000.

4.5 Are there other potential consequences from a criminal law perspective?

Yes, contraventions of Canadian sanctions laws are also punishable by imprisonment.

An individual who contravenes the United Nations Act or Criminal Code is liable to a maximum imprisonment term of 10 years. The maximum imprisonment term under SML, SEMA and FACFO Act is five years.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

No. Canadian sanctions offences are prosecuted by way of criminal prosecution only.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

Not applicable.

4.8 Is there both corporate and personal civil liability?

Not applicable.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

See our answer to question 4.4.

4.10 Are there other potential consequences from a civil law perspective?

Not applicable.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

Not applicable.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

Not applicable.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Enforcement is at the national level only.

4.14 What is the statute of limitations for economic sanctions violations?

Canadian sanctions laws do not impose limitation periods for economic sanctions violations.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

Not applicable.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Canadian sanctions legislation is available to the public online in English at the Justice Laws Website <https://laws-lois.justice.gc.ca/eng>.

We have also prepared a *Primer on Canadian Sanctions Legislation* available on the Blakes website:

- <https://www.blakes.com/insights/bulletins/2020/a-primer-on-canadian-sanctions-legislation>.



Vladimir Shatiryan is a partner in the Blakes Financial Services Regulatory Group. His practice focuses on a broad range of issues impacting Canadian and foreign financial institutions, including banks, insurance companies, credit unions, financial market infrastructures and payment service providers. Vladimir advises Canadian and foreign financial institutions and other companies on the application of Canada's economic sanctions legislation, including screening and disclosure obligations, due diligence and compliance measures, facilitation provisions, and extra-territorial application.

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Ora Morison's practice focuses on regulatory compliance for federally and provincially regulated financial institutions, including Canadian and foreign banks, insurance companies, credit unions, money services businesses, participants in the payment card industry, and other regulated financial service providers.

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