Impact of Canadian Economic Sanctions, Trade Controls and Anti-Corruption Laws on the AML Compliance Function

ACAMS Toronto Chapter Lunch & Learn: Managing the Money Laundering Risk of Offshore Money Flows to Canada

John W. Boscariol
November 12, 2015
Canada’s Trade Controls and Anti-Corruption Laws

- export and technology transfer controls
  - Export Control List & A Guide to Canada’s Export Controls
  - Area Control List (Belarus and North Korea)
- domestic industrial security
  - Defence Production Act, Controlled Goods Program
- economic sanctions
  - Special Economic Measures Act
  - United Nations Act
  - Criminal Code
  - Freezing Assets of Corrupt Foreign Officials Act
- anti-corruption laws
  - Corruption of Foreign Public Officials Act
  - US Foreign Corrupt Practices Act, UK Bribery Act, host country laws
- other trade control legislation
  - blocking orders (Cuba)
  - anti-boycott policy and discriminatory business practices laws

- compliance convergence with AML
Growing Impact of Trade Controls and Anti-Corruption Laws

- increased enforcement of CFPOA

- Canada’s emergence as a “sanctions hawk”

- but challenges in administration and implementation of anti-corruption and sanctions regimes in Canada

- companies are now more concerned than ever before about whom they deal with, who stands behind or owns those companies, and who is acquiring, using or benefiting from your services, goods and technology

- concerns of investors, creditors, banks, underwriters, acquirers, and other stakeholders and business partners
Exposure of Financial Services Companies

- heightened exposure for financial services sector (on the front line)
  - causing, assisting or promoting a violation of your customer or counterparty
  - facilitating directly or indirectly transactions relating to DP’s property
- financial services bans
- monitoring and reporting to regulator
- reporting to RCMP
Exposure of Financial Services Companies

- Criminal Code money laundering provisions

- section 354 – prohibition on possession of property or proceeds of property obtained by or derived directly or indirectly from violation

- section 462.31 - prohibition on dealing with any property or any proceeds of property with the intent to conceal or convert, knowing or believing that the property or proceeds were obtained directly or indirectly as a result of a violation
Canada’s Economic Sanctions Regime

- Special Economic Measures Act and United Nations Act key measures (depending upon the country program)
  - ban on providing or acquiring goods, services, technology/data
  - assets freezes – cannot deal with listed individuals, companies, organizations ("designated persons") – includes facilitation
  - ban on investment
  - aircraft, shipping, transport restrictions
  - travel bans
  - sectoral measures
  - monitoring and reporting obligations
Canada’s Economic Sanctions Regime

- generally apply to persons in Canada and Canadians outside of Canada

- permits generally available for anything that is prohibited under the sanctions measures
  - apply to Economic Law Division of Global Affairs Canada (used to be DFATD)

- no general permits/licenses have been issued, although exemptions may be available
  - grandfathering

- enforced by Canada Border Services Agency and Royal Canadian Mounted Police
United Nations Act Regulations

- targeted countries and groups

- Al-Qaida and Taliban
- Côte d’Ivoire
- Democratic Republic of Congo
- Iran
- Sudan
- Yemen
- Central African Republic
- Lebanon
- Iraq
- Somalia
- Eritrea
- terrorists and terrorist organizations
- Liberia
- North Korea
- Libya
Special Economic Measures Act Regulations

- targeted countries
  - Iran
  - Syria
  - Burma
  - Zimbabwe
  - North Korea
  - Ukraine, including Crimea region
  - Russia
  - South Sudan
Freezing Assets of Corrupt Foreign Officials Regulations

- politically exposed persons
  - Egypt
  - Tunisia
  - Ukraine
Russia / Ukraine Economic Sanctions Measures

- designated person restrictions - prohibition on range of activities involving 290 listed entities and individuals
  - broad designated entity prohibitions
  - debt financing prohibition (30 or 90 days maturity)
  - equity financing prohibition

- prohibitions against supply of listed goods or related financial, technical or other services to Russia or any person in Russia for use in
  - offshore oil exploration or production at a depth greater than 500 meters;
  - oil exploration or production in the Arctic; or
  - shale oil exploration or production
Russia / Ukraine Economic Sanctions Measures

- prohibitions on dealing with Crimea region of Ukraine, including:
  - investment and related services
  - importing, purchasing, acquiring, shipping or otherwise dealing in goods exported from the region
  - exporting, selling, supplying, shipping or otherwise dealing in goods destined for the region;
  - transferring, providing or communicating technical data or services;
  - providing or acquiring financial or other services related to tourism
Russia / Ukraine Economic Sanctions Measures

- export control policy (Global Affairs Canada Export Controls Division)
  - no permit if material benefit to Russian military

- March 25, 2015 unanimous Parliamentary motion:
  - imposition of “sanctions against foreign nationals involved in the detention, torture and death of Sergei Magnitsky.”
  - government to “explore sanctions as appropriate against any foreign nationals responsible for violations of internationally recognized human rights in a foreign country, when authorities in that country are unable or unwilling to conduct a thorough, independent and objective investigation of the violations”
Iran Economic Sanctions Measures

- UN Act regulations (2007 & 2010)
  - 121 designated entities and individuals
  - military, nuclear

- SEMA regulations (2010-2013)
  - 613 designated entities and individuals
  - oil & gas, mining, shipping
  - financial services ban
  - supply ban – “purposes of a business carried on in or operated from Iran”
  - sourcing/import ban
  - investment ban
  - technical data restrictions

- Export and Import Permits Act (ECL) – US-origin goods and technology

- Extraterritorial US measures - being removed under Joint Comprehensive Plan of Action (July 2015)
Key Issues in Interaction With US and Other Regimes

- Canadian measures may be broader than those of the United States and other countries
  - Russia / Ukraine
  - Belarus, Burma, Libya, North Korea
  - Iran – will Canada’s new government now relax sanctions?

- importance of “home grown” compliance policies
Key Issues in Interaction With US and Other Regimes

- Canadian measures can be in direct conflict with those of the United States
  - Foreign Extraterritorial Measures Act “blocking” order in respect of US trade embargo of Cuba
    - obligation to notify Canadian Attorney General of certain communications
    - prohibition against complying with certain U.S. trade embargo measures
    - criminal penalty exposure: up to $1.5 million and/or 5 years imprisonment
  - provincial business discriminatory practices legislation
Key Issues in Interaction With US and Other Regimes

- significant differences in administration and guidance
  - no FAQs, guidelines, rulings, opinions
  - no consolidated lists
  - no voluntary disclosure process
  - no deferred or non-prosecution agreements
- reporting to RCMP/CSIS
  - mandatory for property of designated persons
  - when Global Affairs Canada becomes aware of potential violation, immediate notification to RCMP
John W. Boscariol
McCarthy Tétrault LLP
International Trade and Investment Law Group
www.mccarthy.ca
Direct Line: 416-601-7835

E-mail: jboscariol@mccarthy.ca
LinkedIn: www.linkedin.com/in/johnboscarioltradelaw
Twitter: www.twitter.com/tradelawyer