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A Client Communication

Update on Canadian Economic Sanctions and other Measures on Russia

The Government of Canada recently announced a series of new economic sanctions in response to Russia's continuing military actions in Ukraine. The following is a brief summary of selected sanctions and other measures instituted by Canada to date.

I. Canadian Sanctions against Russia

On February 22, 2022, Prime Minister Justin Trudeau announced the **first round of sanctions**, after Russia signed a decree recognizing the independence of Donetsk and Luhansk. These measures came into effect on February 24, 2022 and listed 351 persons, the members of the Russian Duma as well as two Russian banks.

On February 24, 2022, Canada announced a **second round of sanctions** in response to Russia's invasion, including restrictions on 58 additional Russian individuals and entities, including banks, financial elites and their families, members of the Russian Security Council, imposing restrictions on four Ukrainian individuals for their collaboration with Russia to destabilize Ukraine, and restricting exports of dual-use and other controlled items to Russia by halting the issuance of any new export or brokering permits, as well as cancelling existing permits.

In light of continued attacks on Ukraine, Canada announced its **third round of sanctions** against Russia on February 25, 2022, by sanctioning President Putin himself, his former chief of staff, Sergei Ivanov, and Russian Foreign Minister, Sergei Lavrov. Canada further announced that additional sanctions would be applied to Belarus, targeting 57 individuals for aiding Russia's invasion of Ukraine. On February 27, 2022, Canada closed its airspace to Russian aircrafts.

It is likely that further sanctions on Russia may be announced.

II. Russia and Ukraine Regulations

In response to the attack on Ukraine, Canada has amended the *Special Economic Measures (Russia) Regulations* (the "**Russia Regulations**"), and the *Special Economic Measures (Ukraine) Regulations* (the "**Ukraine Regulations**"). Canada also published a new Notice to Exporters and Brokers effectively barring the export of controlled goods and technology to Russia.

In imposing its sanctions, Canada has acted in coordination with its international allies, including the US, UK, and Germany. Given the significant participation of Russian businesses, in particular Russian banks, in the global economy, these sanctions measures are anticipated to have a greater impact than any sanctions program in recent history. Although Russia is not one of Canada's leading trade and investment partners, annual goods and services flows between the countries exceeds CAD\$1.8 billion; Russian foreign direct investment in Canada exceeds CAD\$1.7 billion; and, Canadian direct investment in Russia totals approximately CAD\$3.5 billion. These figures far exceed trade and investment with any other country subject to Canadian economic sanctions.

Section 3 of the Russia Regulations prohibits persons in Canada and Canadians abroad from engaging in the following measures:

- (a) dealing in any property, wherever situated, held by or on behalf of persons and entities listed in Schedule 1;
- (b) entering into or facilitating, directly or indirectly, any transaction related to such a dealing;
- (c) providing any financial or related service in respect of such a dealing;

- (d) making goods, wherever situated, available to a designated person under Schedule 1; and
- (e) providing any financial or related service to or for the benefit of a designated person or entity in Schedule 1.

In addition, 29 entities, mainly Russian financial institutions, including VEB and Promsvyazbank PJSC, were added to the existing list of 71 designated Russian entities under Schedule 2 of the Russia Regulations. Under subsections 3.1(1) and 3.2(1) respectively, it is prohibited for any person in Canada or any Canadian abroad to transact in, provide financing, or otherwise deal in new debt of longer than 30 days and to provide financing for, or otherwise deal in securities of Schedule 2 persons. The amendments also include the creation of a new Schedule 3.1, which lists three additional sanctioned entities:

1. Central Bank of the Russian Federation;
2. National Wealth Fund of the Russian Federation; and
3. Ministry of Finance of the Russian Federation.

Schedule 3 of the Russia Regulations prohibits any person in Canada or any Canadian abroad to deal in new debt issued by these entities.

The Russia Regulations already impose restrictions on the oil and gas sector. Section 3.3 of the Russia Regulations prohibits the export, sale, supply or shipping of goods listed in Schedule 4 to Russia or to any person in Russia for their use in offshore oil, shale oil or Arctic oil exploration and production. This includes a ban on the provision of any financial, technical or other services related to the goods subject to this prohibition. These specific sanctions have not been amended; however, further restrictions on the energy sector could be adopted as the events unfold.

Additionally, Canada extended the existing dealings prohibitions in the Ukraine Regulations covering the Crimea region to include the non-government-controlled areas of Donetsk and Luhansk. This ban

effectively prohibits any person in Canada and Canadians abroad from:

- (a) making an investment that involves dealing in any property located in the region owned or controlled by Crimea, Luhansk and Donetsk regions of Ukraine;
- (b) providing or acquiring financial or other services for an investment in the above;
- (c) importing, purchasing or acquiring goods from Crimea, Luhansk or Donetsk regions of Ukraine or selling, supplying or transferring goods to any person in those regions;
- (d) providing technical assistance to the Crimea, Luhansk and Donetsk regions in Ukraine or any person in those regions;
- (e) providing financial or other services related to tourism to, or acquire such services from, the Crimea, Luhansk and Donetsk regions of Ukraine or any person in those regions; and
- (f) docking a cruise ship in the Crimea region of Ukraine that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament.

The amended Ukraine Regulations further prohibit any person in Canada and any Canadian aboard from knowingly causing, facilitating or assisting, or that is intended to cause, assist or facilitate a prohibited activity. In addition to the above, Canada published a new Notice of Exporters and Brokers under which export permits previously granted have been revoked and no new permits will be issued for the export and brokering of controlled goods and technology to Russia.

Although attempts have been made by Canada and its allies to coordinate their sanctions measures against Russia, there can be significant differences in the scope and implementation of these measures from one country to another. For example, US has imposed limited prohibitions against Sberbank, rather than listing it as a "specially designated person" subject to blocking or freezing requirements. Canada, on the

other hand, has listed Sberbank as a designated person and subjected any property held by or on behalf of the bank to a freeze. This creates significant gaps in the treatment of Sberbank in each jurisdiction.

The European Union (the "EU") has also introduced various sanctions including individual restrictive measures that will apply to a total of 654 individuals and 52 entities, inducing an asset freeze and a prohibition from making funds available to the listed individuals and entities. EU has also imposed a travel ban prohibiting these persons from entering or transitioning through the EU. Germany has also taken action in the form of halting the permit approval for the Nord Stream 2 gas pipeline from Russia.

III. SWIFT Banking System

On February 26, 2022, leaders of the European Commission, France, Germany, Italy, UK, US and Canada announced the potential removal of select Russian banks from SWIFT (Society for Worldwide Interbank Financial Telecommunication) (the "**Joint Announcement**"). SWIFT is the world's leading provider of secure financial messaging services. It is used by over 11,000 financial institutions in over 200 jurisdictions to facilitate the efficient and accurate transmission of funds around the world. At present, there is no practical alternative to SWIFT for most of these financial institutions. The removal of select Russian banks from SWIFT would therefore make it extremely difficult for Canadian banks to transact with Russian institutions or transact with Russian counterparts whose accounts are held by such institutions.

While the specific banks that will be targeted by this measure have not yet been identified, German authorities indicated that the measures would apply to "Russian banks that are already sanctioned by the international community and where necessary, additional Russian banks." As described above, Russian banks that are currently sanctioned include several of the largest banks in Russia.

Additional measures mentioned in the Joint Announcement include taking action against wealthy Russians who possess the so-called "golden passports" in other countries and implementing a transatlantic task force to ensure effective enforcement of financial sanctions, by identifying and freezing the assets of sanctioned individuals and entities within their respective jurisdictions.

Canadian business that are affected by this measure should review any contractual agreements involving Russian counterparts to identify how best to preserve their interests.

IV. Restrictions on Russia's Central Bank

The Joint Announcement also references restrictions in order to limit Russian Central Bank's ability to access its global reserves. Following the Joint Announcement, the Canadian government has announced that, effective immediately, "all Canadian financial institutions are prohibited from engaging in any transaction with the Russian Central Bank" and Canada is "imposing an asset freeze and a dealings prohibition on Russian sovereign wealth funds."

V. Impact on Canadian Businesses

As a consequence of the amendments, numerous additional individuals and entities are now listed persons and subject to Canadian sanctions. It is important to emphasize that under section 5 of the Russia Regulations, persons in Canada and Canadians abroad are prohibited from knowingly causing, facilitating, assisting or doing anything that is intended to cause, assist or facilitate a prohibited activity. This is a broad prohibition that can apply to any person within Canada or a Canadian abroad who may have dealings with a listed person.

The implications associated with current or potential customers, vendors, service suppliers or other business parties or counterparties becoming listed persons under Canadian sanctions laws are significant. The prohibitions essentially preclude persons in Canada and Canadians outside Canada from engaging,

directly or indirectly, in most activities involving listed individuals and entities. In particular, Canadians are prohibited from dealing in property held by or on behalf of listed persons; entering into or facilitating transactions related to dealings in such property; providing financial or similar services related to dealings in such property; making any goods, wherever situated, available to listed persons; and, providing financial or related services to or for the benefit of listed persons.

Potential violations of Canadian sanctions laws are typically investigated by the RCMP. Violations may result in criminal charges and prosecution. For the *Special Economic Measures Act* specifically, the maximum penalty for such violation is five years imprisonment and a fine of an amount as directed by the court.

Canadian financial institutions and other financial service providers, including securities dealers, portfolio managers and investment advisers, also have a duty to determine on a continuing basis whether they are in possession or in control of property owned or controlled by or on behalf of a listed person. Furthermore, any person in Canada and any Canadian outside Canada must disclose promptly to the RCMP or the *Canadian Security Intelligence Service* any (a) property in their possession or control that they have reason to believe is owned or controlled, directly or indirectly, by a listed person, or by an entity that is owned or controlled by a listed person, and (b) information about a transaction or proposed transaction in respect of such property.

All Canadian companies conducting businesses abroad should screen all parties involved in their dealings and transactions, as well as screen those who directly or indirectly own or control such parties, against the lists of sanctioned individuals and entities.