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Vol. 148, No. 8 — April 9, 2014

Registration

SOR/2014-60 March 17, 2014

SPECIAL ECONOMIC MEASURES ACT

Special Economic Measures (Ukraine) Regulations

P.C. 2014-284 March 17, 2014

Whereas the Governor in Council is of the opinion that the situation in Ukraine constitutes a grave breach of international peace and security that has resulted or is likely to result in a serious international crisis;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Foreign Affairs, pursuant to subsections 4(1) to (3) of the *Special Economic Measures Act* ([see footnote a](#)), makes the annexed *Special Economic Measures (Ukraine) Regulations*.

SPECIAL ECONOMIC MEASURES (UKRAINE) REGULATIONS

INTERPRETATION

Definitions

1. The following definitions apply in these Regulations.

“Convention”

« *Convention* »

“Convention” means the Vienna Convention on Diplomatic Relations, done at Vienna on April 18, 1961.

“designated person”

« *personne désignée* »

“designated person” means a person who is in Ukraine, or is a national of Ukraine who does not ordinarily reside in Canada, and whose name is listed in the schedule.

“Minister”

« *ministre* »

“Minister” means the Minister of Foreign Affairs.

“pension”

« *pension* »

“pension” means a benefit paid under the *Old Age Security Act*, the *Canada Pension Plan* or an *Act respecting the Quebec Pension Plan*, CQLR, c. R-9, any superannuation, pension or benefit paid under or in respect of any retirement savings plan or under any retirement plan, any amount paid under or in respect of the *Garnishment, Attachment and Pension Diversion Act* or the *Pension Benefits Division Act*, and any other payment made in respect of disability.

“Ukraine”

« *Ukraine* »

“Ukraine” includes

- (a) any political subdivision of Ukraine;
- (b) the government, and any department, of Ukraine or of a political subdivision of Ukraine; and
- (c) any agency of Ukraine or of a political subdivision of Ukraine.

LIST

Schedule

2. A person whose name is listed in the schedule is a person in respect of whom the Governor in Council, on the recommendation of the Minister, is satisfied that there are reasonable grounds to believe is

- (a) a person engaged in activities that directly or indirectly facilitate, support, provide funding for or contribute to the deployment of Russian armed forces to Crimea or to the seizing of control of Ukrainian government and military entities in Crimea;
- (b) an associate or family member of a person described in paragraph (a);
- (c) an entity owned or controlled by, or acting on behalf of, a person set out in paragraph (a); or

(d) a senior official of an entity described in paragraph (c).

PROHIBITIONS

Prohibited transactions and activities

3. It is prohibited for any person in Canada and any Canadian outside Canada to

- (a) deal in any property, wherever situated, held by or on behalf of a designated person;
- (b) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in paragraph (a);
- (c) provide any financial or other related service in respect of a dealing referred to in paragraph (a);
- (d) make any goods, wherever situated, available to a designated person; or
- (e) provide any financial or related service to or for the benefit of a designated person.

Non-application

4. Section 3 does not apply in respect of

- (a) any payment made by or on behalf of a designated person that is due under a contract entered into before the person became a designated person, provided that the payment is not made to or for the benefit of a designated person;
- (b) pension payments to any person in Canada or any Canadian outside Canada;
- (c) any transaction in respect of any account at a financial institution held by a diplomatic mission, if the transaction is required in order for the mission to fulfill its diplomatic functions as set out in Article 3 of the Convention or, if the diplomatic mission has been temporarily or permanently recalled, when the transaction is required in order to maintain the mission premises;
- (d) any transaction to international organizations with diplomatic status, a United Nations agency, the International Red Cross and Red Crescent Movement, or Canadian non-governmental organizations that have entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development;
- (e) any transactions necessary for a Canadian to transfer to a non-designated person any accounts, funds or investments of a Canadian held by a designated person on the day on which that person became a designated person;
- (f) financial services required in order for a designated person to obtain legal services in Canada with respect to the application of any of the prohibitions set out in these Regulations; and
- (g) loan repayments made to any person in Canada, or any Canadian outside Canada, in respect of loans entered into before the coming into force of these Regulations, enforcement of security in respect of those loans, or payments by guarantors guaranteeing those loans.

Assisting prohibited act

5. It is prohibited for any person in Canada and any Canadian outside Canada to do anything that causes, assists or promotes, or is intended to cause, assist or promote, any act or thing prohibited under section 3.

OBLIGATIONS

Duty to determine

6. Each of the following entities must determine on a continuing basis whether it is in possession or control of property owned or controlled by or on behalf of a designated person:

- (a) authorized foreign banks, as defined in section 2 of the *Bank Act*, in respect of their business in Canada or banks to which that Act applies;
- (b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;
- (c) foreign companies, as defined in subsection 2(1) of the *Insurance Companies Act*, in respect of their insurance business in Canada;
- (d) companies, provincial companies and societies, as those terms are defined in subsection 2(1) of the *Insurance Companies Act*;
- (e) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities and insurance companies and other entities engaged in the business of insuring risks that are regulated by a provincial Act;
- (f) companies to which the *Trust and Loan Companies Act* applies;
- (g) trust companies regulated by a provincial Act;
- (h) loan companies regulated by a provincial Act;
- (i) entities that engage in any activity described in paragraph 5(h) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, if the activity involves the opening of an account for a client; and
- (j) entities authorized under provincial legislation to engage in the business of dealing in securities, or to provide portfolio management or investment counselling services.

Disclosure

7. (1) Every person in Canada and every Canadian outside Canada must disclose without delay to the Commissioner of the Royal Canadian Mounted Police

- (a) the existence of property in their possession or control that they have reason to believe is owned or controlled, directly or indirectly, by a designated person or by an entity owned or controlled by a designated person; and
- (b) information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

Immunity

(2) No person contravenes subsection (1) by disclosing in good faith under that subsection.

APPLICATIONS

Application to no longer be a designated person

8. (1) A designated person may apply in writing to the Minister to have their name removed from the schedule.

Recommendation

(2) On receipt of the application, the Minister must decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant's name be removed from the schedule.

Decision

(3) The Minister must make a decision on the application within 90 days after the day on which the application is received.

Notice

(4) The Minister must give notice without delay to the applicant of the decision taken.

New application

(5) If there has been a material change in circumstances since the last application was submitted, a person may submit another application under subsection (1).

Application for a certificate

9. (1) A person claiming not to be a designated person may apply to the Minister for a certificate stating that they are not the person who has been designated under section 2.

Decision

(2) If it is established that the person is not a designated person, the Minister must issue a certificate to the applicant within 30 days after the day on which the application is received.

APPLICATION PRIOR TO PUBLICATION

Statutory Instruments Act

10. For the purpose of paragraph 11(2)(a) of the *Statutory Instruments Act*, these Regulations apply before they are published in the *Canada Gazette*.

COMING INTO FORCE

Registration

11. These Regulations come into force on the day on which they are registered.

SCHEDULE (Sections 1, 2 and 8)

PERSONS

1. Serhiy Valeriyovich AKSYONOV
2. Volodymyr Andriyovych KONSTANTYNOV
3. Viktor Volodymyrovich MEDVEDCHUK

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations or the Order.)

Issues

Ukrainian officials, party members, and other individuals in the province of Crimea, working in concert with the Russian Federation government and Russian military forces, have illegally seized power on the Crimean peninsula. They are now facilitating Russian military action against the Ukrainian government and military inside Crimea, as well as Russia's violation of Ukraine's sovereignty and territorial integrity.

Background

Since February 27, 2014, Ukrainian provincial-level officials in Crimea, with Russian backing, have taken a series of measures that violate both the Ukrainian constitution and, because of Russian involvement, international law. Heavily armed Russian soldiers have taken control of the Ukrainian province of Crimea, surrounding or seizing direct control of Crimea's airports, government buildings, provincial legislature and military installations. They have also severed telephone lines within Crimea, set up roadblocks on Crimean roads, and built trenches to sever the Crimean peninsula from the Ukrainian mainland.

With the Crimean provincial legislature under Russian military control, the legislature's Speaker Volodymyr Konstantynov, announced that legislators had passed a vote of non-confidence in the provincial government of Crimea. Konstantynov also announced that legislators had voted to appoint Serhiy Aksyonov as the new prime minister of Crimea. Aksyonov had been head of the Russian Unity party in Crimea, a Russian-backed party that supported closer integration with Russia. The acting president of Ukraine, Oleksandr Turchynov, decreed that the appointment of Aksyonov as the head of the Crimean government was unconstitutional.

On March 1, 2014, Aksyonov declared himself in charge of all military, police, air forces, navy and border guards in Crimea, and urged those who disagreed with this declaration "to resign." He also made a request to President Vladimir Putin for "assistance to preserve peace and calm." On that same day, Aksyonov also announced that a referendum on whether Crimea should separate from Ukraine was being moved forward two months, from May 25, 2014, to March 30, 2014.

Upon an invitation from the Ukrainian government on March 4, 2014, an unarmed military observation mission composed of various Organization for Security and Cooperation in Europe (OSCE) countries (including two observers from Canada) was formed to report on military activities in the Crimean peninsula. This mission has been confronted several times by unidentified armed men who did not allow them to enter Crimea and turned them back.

At the request of the Prosecutor General's Office of Ukraine, the Kyiv District Administrative Court found the appointment of Aksyonov as Prime Minister of Crimea, and the decision to organize a referendum, illegal. The Court also struck down the February 27, 2014, decision by the Crimean legislature to dissolve the provincial government.

On March 5, 2014, a Ukrainian court ordered the arrest of Serhiy Aksyonov and Volodymyr Konstantynov under Part 1 of Article 109 of the *Criminal Code of Ukraine*, relating to "actions aimed at the violent overthrow, change of constitutional order, or the seizure of state power."

On March 6, 2014, the Crimean Parliament adopted a resolution declaring its unanimous decision to become part of Russia, and moving forward the date of the referendum by another two weeks to March 16, 2014. The Ukrainian Ministry of Justice has underlined the illegality of the referendum, and noted that, according to the Ukrainian constitution, only national referendums are permitted.

Between March 2, 2014, and March 14, 2014, Russian forces steadily took operational control of the Crimean peninsula, capturing key installations and chokepoints, and increasing their troop presence to an estimated 20 000.

With the Crimean provincial legislature under Russian military control, the legislator's Speaker announced legislators had passed a vote of non-confidence in the provincial government of Crimea. The Speaker also announced that legislators had voted to appoint Serhiy Aksyonov as the new prime minister of Crimea. On March 6, 2014, the self-appointed Crimean Parliament adopted a resolution declaring its unanimous decision to become part of Russia, and set a referendum on this question for March 16, 2014.

Objectives

The proposed *Special Economic Measures (Ukraine) Regulations* (the Regulations) impose targeted sanctions against Ukrainian officials, party members, and other individuals in the province of Crimea who, working in concert with the Russian Federation government and Russian military forces, have illegally seized power on the Crimean peninsula and are facilitating Russia's violation of Ukraine's sovereignty and territorial integrity.

Description

The Governor in Council has made these Regulations in order to respond to the gravity of the situation in Ukraine, which, in the opinion of the Governor in Council, constitutes a grave breach of international peace and security that has resulted or is likely to result in a serious international crisis.

The Schedule to the Regulations establishes a list of three individuals. The criteria for listing are established in section 2 of the Regulations. The Regulations prohibit any person in Canada and any Canadian outside Canada from

- dealing in any property, wherever situated, held by or on behalf of a designated person;
- entering into or facilitating, directly or indirectly, any transaction related to such a dealing;
- providing any financial or related service in respect of such a dealing;
- making goods, wherever situated, available to a designated person; and
- providing any financial or related service to or for the benefit of a designated person.

Exceptions to the above-noted prohibitions are available for the following:

- Payments made by or on behalf of designated persons pursuant to contracts entered into prior to the coming into force of the Regulations, provided that the payments are not made to or for the benefit of a designated person;
- Pension payments to any person in Canada or any Canadian outside Canada;
- Transactions in respect of accounts at financial institutions held by diplomatic missions, provided that the transaction is required in order for the mission to fulfill its diplomatic functions under the Vienna Convention on Diplomatic Relations, or, transactions required in order to maintain the mission premises if the diplomatic mission has been temporarily or permanently recalled;
- Transactions by international organizations with diplomatic status, agencies of the United Nations, the International Red Cross and Red Crescent Movement, or Canadian nongovernmental organizations that have entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development;
- Transactions necessary for a Canadian to transfer to a non-designated person any accounts, funds or investments of a Canadian held by a designated person on the day on which that person became designated;
- Financial services required in order for a designated person to obtain legal services in Canada with respect to the application of any of the prohibitions in the Regulations; and
- Loan repayments made to any person in Canada or any Canadian abroad in respect of loans entered into before the coming into force of the Regulations, enforcement of security in respect of those loans, or payments by guarantors guaranteeing those loans.

A separate *Special Economic Measures (Ukraine) Permit Authorization Order*, made pursuant to subsection 4(4) of the *Special Economic Measures Act* authorizes the Minister of Foreign Affairs to issue to any person in Canada and any Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, with a designated person that is otherwise restricted or prohibited pursuant to the Regulations.

“One-for-One” Rule

The “One-for-One” Rule applies to this proposal, as there are minimal administrative costs to business, because of the reporting requirement. However, the administrative burden associated with these Regulations is carved out from the “One-for-One” Rule as they address unique, exceptional circumstances.

Small business lens

The small business lens does not apply to this proposal, as there are no costs (or insignificant costs) to small business, and small businesses would not be disproportionately affected.

Consultation

Foreign Affairs, Trade and Development Canada drafted the Regulations in consultation with the Department of Justice and Citizenship and Immigration Canada.

Rationale

The measures contained in the Regulations demonstrate Canada’s concern about the situation in Ukraine. The economic sanctions in the Regulations target individuals engaged in activities that directly or indirectly facilitate, support, provide funding for, or contribute to the deployment of Russian armed forces to Crimea or to the seizing of control of Ukrainian government and military entities inside Crimea.

Implementation, enforcement and service standards

Canada’s sanctions regulations are enforced by the Royal Canadian Mounted Police and the Canada Border Services Agency. In accordance with section 8 of the *Special Economic Measures Act*, every person who wilfully contravenes these Regulations is liable upon summary conviction to a fine of not more than \$25,000 or to imprisonment for a term of not more than one year or to both, or upon conviction on indictment, to imprisonment for a term of not more than five years.

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Footnote a

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