

Budget 2022 Bill beefs up economic sanctions legislation

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The *Budget Implementation Act, 2022, No. 1* (the Act), first introduced on April 28, 2022, received royal assent on June 23, 2022. The Act largely implements some of the tax measures announced in the 2022 Federal Budget (for more details, please see the [Osler Update dated April 7, 2022](#)). However, the Act also implements important legislative amendments to the *Special Economic Measures Act, Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* and certain other legislation relating to the seizure and disposition of property that is owned, held or controlled, directly or indirectly, by certain foreign persons, and the use of net proceeds from the disposition of that property.

The *Special Economic Measures Act* was enacted in 1992 to allow the Governor in Council to impose sanctions on foreign states, individuals and entities in them and foreign states' nationals who do not ordinarily reside in Canada, in specified circumstances. A person who wilfully contravenes or fails to comply with an order or regulation made under the *Special Economic Measures Act* can be charged with a summary offence or an indictable offence, and sentenced to a fine of up to C\$25,000, imprisonment for up to five years, or both.

The *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* was enacted in 2017 to allow Canada to designate specific foreign individuals who are "responsible for gross violations of internationally recognized human rights" and impose specific sanctions against them. The *Sergei Magnitsky Law* provides for similar consequences for violations as the *Special Economic Measures Act*.

The Act expands the definition "property" in the *Special Economic Measures Act* to include any real, personal, movable, immovable, tangible, intangible, corporeal and incorporeal property. As a result, it is now clear that "property" for purposes of that Act encompasses money, funds, currency, digital assets and virtual currencies.

The Act also expands the economic measures that can be taken against certain foreign persons and their assets in Canada under the following circumstances, which were not amended by the Act:

- if an international organization or association to which Canada belongs calls for economic measures against the foreign state
- where international peace and security is gravely breached such that a serious international crisis has or is likely to arise
- where human rights are systemically and grossly violated in a foreign state
- where significant corruption acts are committed by a national of a foreign state

In addition to expanding the definition of property, the Act also amends the language with respect to the ownership of that property. Seizing or restraining orders can now be issued for any property in Canada that is directly or indirectly owned, held or controlled by a foreign

state, a person in or a national of the foreign state. The previous language was property “held by or on behalf of” the relevant foreign state or foreign national.

One of the landmark legislative changes introduced by the Act is that the relevant Minister — generally the Minister of Foreign Affairs, though other Ministers can also be designated — can now apply to the appropriate superior provincial court with a request to issue a forfeiture order in favor of Her Majesty in Right of Canada in respect of any property mentioned in the seizing or restraining order, as the case may be.

A person who has an interest in or right to the relevant property, shall be served with a notice and shall have the right to be heard and to object to the Minister’s application before the judge rules on property forfeiture.

If a judge issues a forfeiture order, the forfeited property is disposed of in accordance with the *Seized Property Management Act*, and the net proceeds of disposition are paid out for one of the following good purposes:

- helping a foreign state that was adversely affected by a grave breach of international peace and security rebuild
- restoring international peace and security
- compensating victims of a grave breach of international peace and security, gross and systematic human rights violations or acts of significant corruption

The Minister of Foreign Affairs can now sign an agreement with any foreign state or individual receiving such proceeds with respect to the payout and use of the net proceeds from the disposal of seized property.

Finally, the Act amends the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to introduce the definition of property, amend the ownership requirements, and introduce property forfeiture rules similar to the amendments to the *Special Economic Measures Act*. The net proceeds from the disposition of forfeited property under this law can only be paid out to compensate victims of specified circumstances, including acts of significant corruption, extrajudicial killings, torture and other gross violations of internationally recognized human rights committed against individuals in a foreign state.