



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere



RUSSIA SANCTIONS ACT STATUTORY REVIEW
OCTOBER 2024

Consultation Document



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Glossary of Terms

AML/CFT	Anti-Money Laundering/Countering Financing of Terrorism
AML/CFT Act	Anti-Money Laundering and Countering Financing of Terrorism Act 2009
AML/CFT supervisors	The Department of Internal Affairs, the Financial Markets Authority, and the Reserve Bank of New Zealand, are the entities which regulate reporting entities covered by the AML/CFT Act.
Asset	Defined in section 5 of the Russia Sanctions Act (RSA).
Associate	Defined in regulation 5(2) of the Russia Sanctions Regulations (RSR).
Commissioner	Means the Commissioner of Police (section 5 of the RSA).
CEA	Customs and Excise Act 2018.
Dealing with assets	Defined in section 5 of the RSA.
Dealing with services	Defined in section 5 of the RSA.
Duty holder	Defined in section 5 of the RSA.
Entity	Defined in section 5 of the RSA.
Luxury Good	Defined in regulation 5(1) of the RSR.
MFAT	Ministry of Foreign Affairs and Trade.
Minister	Minister of Foreign Affairs.
Person	Defined in section 5 of the RSA.
Personal Effect	Defined in regulation 5(5) of the RSR.
Relative	Defined in regulation 5(1) of the RSR.
RSA	Russia Sanctions Act 2022.
RSR	Russia Sanctions Regulations 2022.
SAR	Suspicious Activity Report.
Service	Defined in section 5 of the RSA.



Introduction

The New Zealand Parliament unanimously passed the [Russia Sanctions Act \(RSA\)](#) on 9 March 2022, following Russia's illegal invasion of Ukraine on 24 February 2022. The RSA gives the Minister of Foreign Affairs (**the Minister**) the ability to impose sanctions in response to threats to the sovereignty or territorial integrity of Ukraine or another country.

Sanctions are a way for New Zealand to express serious concern about a violation of international law. They are commonly used by partner countries to influence foreign governments, entities, and individuals to change their behaviour without using armed force. The sanctions imposed under the RSA are designed to exert pressure on Russia to change its course of behaviour, including by interrupting economic relations and trade.

Sanctions prevent New Zealand individuals, entities, and financial institutions from having dealings with sanctioned persons, assets and services. This ensures that New Zealanders do not support, whether inadvertently or not, Russia's illegal invasion of Ukraine.

New Zealand's sanctions are aligned with those of like-minded countries from the Indo-Pacific, Europe and North America including Australia, Canada, the European Union, Japan, the United Kingdom, and the United States.

The RSA and [Russia Sanctions Regulations 2022 \(RSR\)](#) place a range of obligations on all New Zealanders by prohibiting or restricting specific activities. They also require New Zealanders to report any suspicious activity.

Legislative Context

New Zealand implements sanctions imposed by the United Nations Security Council in regulations made under the United Nations Act 1946. Russia's permanent membership of the Security Council and veto power meant that UN sanctions were not imposed following Russia's invasion of Ukraine.

New Zealand does not have a general autonomous sanctions regime. It was therefore necessary to pass standalone legislation to impose sanctions independent of a Security Council resolution. New Zealand did this by passing the RSA. The RSA drew on the framework of the Autonomous Sanctions Bill introduced to Parliament in 2017 but not enacted.

The need to respond swiftly to Russia's invasion was reflected in the fact the Russia Sanctions Bill was passed under urgency. This meant that the RSA did not receive select committee consideration and public consultation.

The Russia Sanctions Act and Regulations

The RSA sets up a broad and responsive statutory framework to allow the Minister to recommend sanctions by regulation as necessary to respond to Russia's war in the Ukraine.



The sanctions enacted by the RSR are intended to complement and reinforce sanctions by other countries (as provided for in section 8 of the RSA). Accordingly, they reflect partners' sanctions as well as the types of sanctions measures adopted by the UNSC and implemented in New Zealand under the United Nations Act 1946. A range of partners' autonomous sanctions regimes are considered when Regulations are adopted.

The objectives of New Zealand's regulatory system are to:

- Impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia) to demonstrate New Zealand's condemnation.
- Reduce the risk that New Zealand individuals and businesses may breach sanctions or be used to evade sanctions.
- Ensure New Zealand is not perceived as a soft route to evade sanctions imposed by other countries.
- Ensure any non-compliance, breaches or evasions are dealt with swiftly and effectively by making best use of New Zealand's existing regulatory and enforcement frameworks.
- Manage, as appropriate, disproportionate impacts on New Zealand individuals and businesses.

More information about MFAT's regulatory approach for the RSA can be found in the [Russia Sanctions Regulatory Charter](#).

Statutory Review of the Russia Sanctions Act 2022

This review is required by section 29 of the RSA. The Minister is required to review the operation and effectiveness of the Act and present a report on the review to the House of Representatives.

This review presents an opportunity to assess the operation of the legislation and provide recommendations on how it could be improved. The review is being led by officials at MFAT as the administering agency for the RSA. The Terms of Reference for the statutory review can be found at Annex 1.

Scope of the Review

The review is focused on the operation and effectiveness of the RSA. Broader questions, such as the merits and efficacy of sanctions generally, and whether New Zealand should have a general autonomous sanctions regime, are outside the scope of this review.

In summary the review will assess:

- How has the RSA been operating since it came into force on 9 March 2022?
- How effective is the RSA, and is it fit for purpose?
- Does the RSA strike the appropriate balance between the risk of sanction evasion in New Zealand and the RSA's compliance costs?
- Does the RSA achieve its statutory purposes?



We would also welcome feedback on:

- What is it like to use and interact with the RSA?
- How do you find the mechanics of the RSA and RSR work in practice?
- What is not working satisfactorily?
- What could be done better?

We will consider the operation of the RSR as part of the review.

Material that falls outside the scope of the review but which is relevant to the administration of the Sanctions Unit will be relayed to them directly.

About this document

We have developed this document based on issues arising from earlier engagement with other agencies and stakeholders operating under the RSA. The issues and questions are intended to encourage responses on the RSA's and RSR's operation and effectiveness.

The issues are structured in eight parts:

1. General questions about the review
2. Institutional Arrangements and interaction with other Agencies
3. Clarity around the scope of the RSA
4. Extraterritoriality
5. Investigation and Enforcement
6. Review and Oversight of Sanctions
7. Prohibitions
8. Definitions and Terminology

You are free to make a submission on any issue you believe to be within the scope of this review.

How to make a submission

You can provide a submission by using the Response Form on the MFAT website and emailing your response to RSAreview@mfat.govt.nz. Please send us any feedback 5pm, Monday 16 December 2024.

If you need more time to provide feedback, please let us know as soon as possible.

Timeframes for the review and next steps

The review will proceed along the following indicative timeframe:

Stage	Timeframes
Public consultation closes	16 December 2024
Review of feedback and report drafting	First quarter of 2025



Report provided to the Minister of Foreign Affairs, to be tabled in the House of Representatives as soon as practicable thereafter	Within the first half of March 2025
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Personal information and confidentiality

Any personal information you submit with your response to our public consultation will be held in accordance with the Privacy Act 2020. The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals.

We intend to publish submissions that we receive on MFAT’s website with personal information redacted. We will also accept submissions made in confidence or anonymously. Please clearly indicate in the email accompanying your submission if you do not wish for your submission, name, or any other personal information to be published on the MFAT’s website or included in any summary of submissions.

We may be asked to release submissions in accordance with the Official Information Act 1982 and the Privacy Act 2020. These laws have provisions to protect sensitive information given in confidence, but we cannot guarantee all information will be withheld. Please indicate where appropriate any information which is particularly sensitive and/ or which has been given in confidence.



Topic 1: General questions about the RSA

The purpose of the RSA is to enable New Zealand to impose and enforce sanctions in response to military actions¹ by Russia (and by countries or persons who may be assisting Russia). In addition to the purpose of the RSA, the regulatory system has identified some additional objectives and principles that underpin the implementation of the system.²

Below are some general questions about the operation and effectiveness of the RSA and by extension the RSR. We welcome any comments or observations from you in response to these questions.

1. How is the RSA operating and is it achieving its purpose?
2. Are there any areas of risk that the RSA does not appropriately deal with?
3. What is working in respect of the RSA and what is not?
4. Are there areas that are particularly challenging to comply with?
5. What could we do to improve the operation of the RSA?
6. Would the RSA benefit from additional statutory objectives or purpose? If so, what would they be?

¹ The military actions began on 24 February 2022 in relation to Ukraine, but the sanctions may relate to military actions in Ukraine or in any other country.

² Russia Sanctions Regulatory Charter, page 12.



Topic 2: Institutional Arrangements and interaction with other Agencies

MFAT is responsible for the effective administration of the RSA. Given the wide range of government agencies involved in implementing the different types of sanctions, working together in a coordinated way is critical to maintaining an effective regulatory regime. The [Russia Sanctions Regulatory Charter](#) sets out the functions and accountabilities agreed among agencies. The regulatory system is designed to take advantage of existing systems and relationships with regulated communities to the fullest extent possible.

In most cases, the Russia sanctions operational activities are part of existing regulatory and operational systems, for example, within New Zealand Police, New Zealand Customs Service (Customs) and Immigration New Zealand. MFAT is advised of any operational activities that relate to Russia sanctions and oversight is provided by a cross-agency governance group.

The range of agencies involved in sanctions and their roles can be seen here at **Annex 2**.

Interaction between the AML/CFT Act and the RSA

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**) and supporting regime covers approximately 7000 entities across 30 sectors. These entities are required to manage and mitigate the risk that they may be misused for money laundering or terrorism financing. While these entities are not currently obligated to specifically consider, manage, and mitigate sanctions risks, these activities are also likely to have a deterrent impact on sanctions breaches.

To support this the RSA provides a requirement for “duty holders” already captured as “reporting entities” under the AML/CFT Act to report to the Commissioner of Police when they suspect that they are in possession of assets or providing services that are subject to a sanction. This will facilitate the monitoring and enforcement of any restrictions imposed under the regulations as well as identifying areas where duty holders may require additional guidance.

In addition, under the AML/CFT Act, reporting entities are required to report suspicious activities to the Commissioner of Police. This includes where there is suspicion that activities or transactions, including international funds transfers, relate to breaches of sanctions. This provides some visibility of potential sanctions activity.

With this context in mind, we ask the following:

7. Given reporting entities under the AML/CFT Act 2009 are duty holders under the RSA, do you think the RSA is sufficiently clear about the link between the two regimes?
8. Should AML/CFT supervisors have an express sanctions role under the RSA or the AML/CFT Act to be able to help ensure RSA duty holders comply with their sanctions obligations?



9. In order to better support RSA duty holders with their compliance obligations, should there be more guidance from AML/CFT supervisors about compliance with the RSA? If yes, what guidance would you like to see, and should there be a statutory obligation on duty holders to have regard to this guidance?
10. Should reporting entities have any further obligations (beyond risk assessment) that they must implement specific to the mitigation of risks relating to Russia sanctions evasion? If so, what?
11. If the RSA or AML/CFT Act were to be amended to provide a mandate to AML/ CFT supervisors to have oversight and provide guidance to RSA duty holders, which are also reporting entities under the AML/CFT Act, would that raise compliance costs disproportionately?

For AML/CFT Act and RSA suspicious activity, [Suspicious Activity Reports](#) (SARs) must be reported through an online form in [GoAML](#) web portal. Section 46 of the AML/CFT prohibits reporting entities from disclosing information contained in SAR reports except in limited circumstances. The RSA does not have a similar prohibition. With this context in mind, we ask:

12. Are there situations where you believe the RSA should prohibit the disclosure of information contained in a SAR report?

As stakeholders will be aware, in July 2022 the Ministry of Justice concluded its [Statutory Review of the AML/CFT](#) with the following recommendations which relate to the RSA:

- The AML/CFT Act should be amended to have as an express purpose to support businesses in their implementation of the RSA.³
- Section 58 of the AML/CFT Act should be amended to require businesses to assess their general risk of sanctions evasion.⁴
- The AML/CFT Act should be amended to include supervision of the implementation of financial sanctions within the scope of the existing AML/CFT supervisor responsibilities.⁵

We would welcome your views on whether you agree or disagree with these recommendations and why.

Interactions with the Customs and Excise Act 2018

One of the purposes of the Customs and Excise Act (**CEA**) is to provide for the administration and enforcement of customs controls at the border. The RSA and RSR aim to put economic pressure on Russia by prohibiting the import and export of sanctioned goods. This review is an opportunity to consider how the two regimes align and whether any clarification is required.

³ Recommendation 4 of the AML/CFT Act Statutory Review.

⁴ Recommendation 13 of the AML/CFT Act Statutory Review.

⁵ Recommendation 31 of the AML/CFT Act Statutory Review.



The RSA provides that people can apply to the Minister for a revocation, amendment, or exemption from a sanction.⁶ This can extend to goods which are prohibited for import into New Zealand. The CEA also contains a detailed statutory process for applications in Schedule 5 to [review a seizure of goods](#), which may extend to cover sanctioned goods. In this context:

13. Are the processes under the CEA clear insofar as they relate to the RSA/RSR? In Particular, do you have any views about the relationship between, and sequencing of, the processes under section 13 of the RSA and under schedule 5 of the CEA? Are there aspects that could be improved?

14. For example, should the RSA be amended to provide that:

- (i) Any application under section 13 of the RSA in relation to seized goods must be made prior to importation with no application able to be made after importation so as to better align with schedule 5 of the CEA?

15. Alternatively, should the RSA be amended to provide that:

- (i) Any application under section 13 in relation to a seized good must be made within 20 days of being informed of seizure, and
- (ii) The schedule 5 process in the CEA be stayed pending Ministerial consideration of the section 13 application under the RSA?

⁶ Section 13 of the RSA.



Topic 3: Clarity around the scope of the RSA

Duty to report

The RSA places an obligation on duty holders to report to the Commissioner of Police, as soon as practicable (but no later than 3 days), information about certain assets and services relating to designated persons. Further information on the duty to report can be found [here](#). Reporting entities under the AML/CFT Act and anyone declared to be a duty holder under the RSR are “duty holders” for the purpose of the RSA. The RSR in turn specify duty holders as being people in trade who buy or sell specified goods with a total value of \$10,000 or more.

The obligation to report arises if duty holders suspect on reasonable grounds that they are in possession or immediate control of assets that are designated or owned or controlled – directly or indirectly – by a designated person; and/or to deal with, or are dealing with, designated services or services in relation to a designated person.

With this context:

16. Are the circumstances where duty holders have an obligation to report under the RSA clear? If not, how could they be made clearer?
17. Is the timeframe of reporting within 3 days of forming reasonable grounds to suspect a sanctions breach an appropriate timeframe? If not, why?
18. Is the threshold for duty holders to report on reasonable grounds to suspect clearly understood within your business?
19. When a report is submitted to the Commissioner of Police using [GoAML](#), should there be a requirement for RSA duty holders to also notify MFAT at the same time?
20. Is the purpose of SAR reporting for RSA breaches and how that information will be used clear?
21. Should the RSA be amended to include a positive obligation for non-duty holders to report if they form reasonable grounds to suspect a sanctions breach has occurred?

Associates and Relatives

The RSA framework relies on the concept of Associates to help avoid sanctions evasion. One common method of sanctions evasion is when sanctioned persons move assets or funds to business associates, relatives, trusts, or subsidiary companies. Certain Associates and Relatives, who are known to be involved in the circumvention of sanctions or who have relevant economic or strategic influence in Russia, have been designated by name and added to the New Zealand [sanctions register](#).



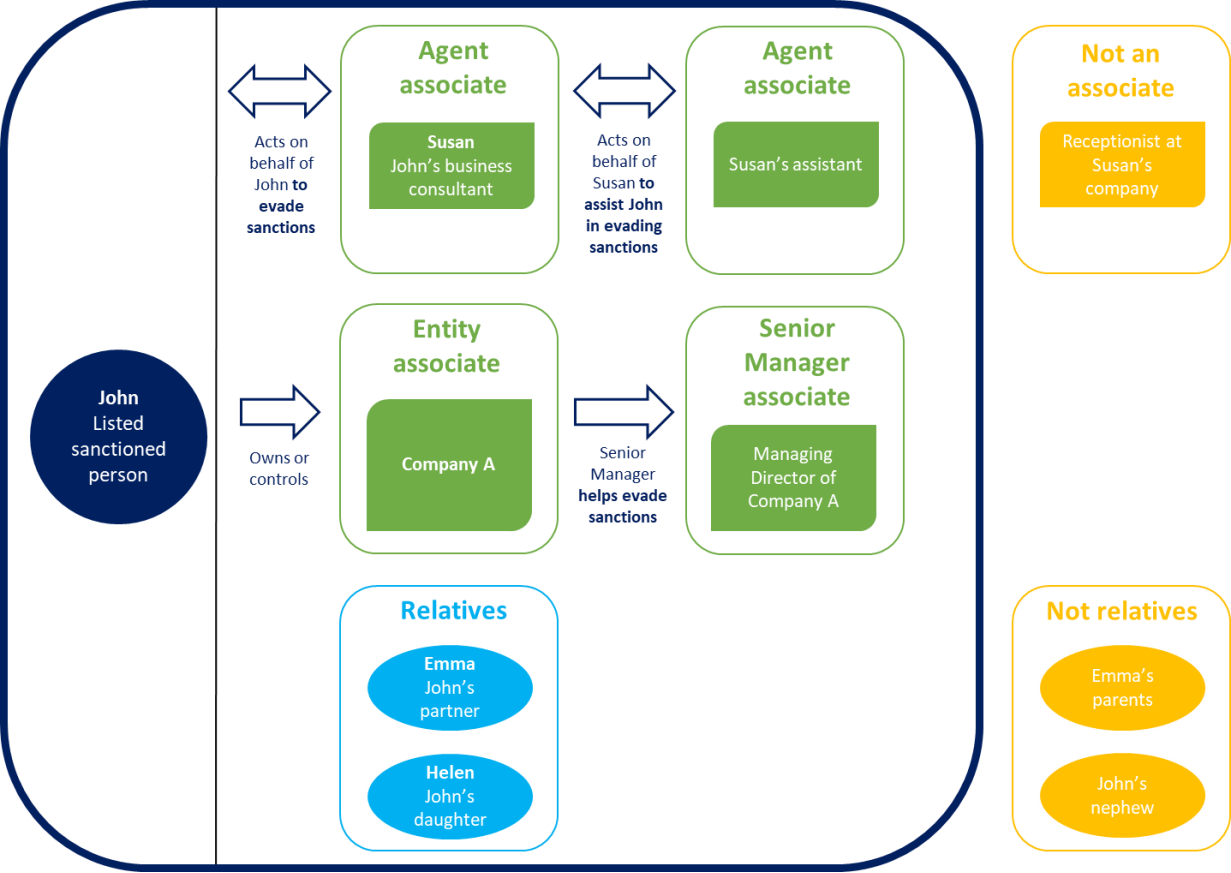
Other Associates and Relatives, however, have not been listed on the sanctions register. Instead, they have been sanctioned as members of a class without their names being added to the register.

The RSA stipulates that the regulations apply to Associates as if they were designated persons themselves.

The types of Associates governed by the RSR include:

- **Relatives** of a sanctioned person reg (5)(1)(a) and (b)
- **Agents** who act on behalf of a listed sanctioned person, either directly or indirectly reg (5)(2)(a)
- **Entities** that are owned or controlled by a listed sanctioned person reg (5)(2)(b) and (3)
- **Senior managers** able to exercise significant influence over the management or administration of a listed sanctioned entity, or an entity owned or controlled by a listed sanctioned person: reg (5)(2)(c) and (5)(4).

These different types of Associates are illustrated below:



To identify Associates who are not named in the register, New Zealanders and New Zealand businesses must undertake appropriate due diligence. There is [guidance](#) on the MFAT



website which recommends a close look into the relationships and beneficial ownership arrangements of customers to assess the risk.

We understand from outreach activities that there can be difficulty in undertaking due diligence in relation to Associates and Relatives who are not named and that this can involve high compliance costs.

In relation to Associates we have the following questions:

22. Should the concept of Associates be retained as part of the RSA and RSR?

23. If yes, are the current definitions and guidance on the different types of Associates adequate for the identification of the different types of Associates? If no, please specify which type of Associate creates issues from a compliance perspective and why?

24. If New Zealand primarily listed Associates by name, in what circumstances, if any, would it still be appropriate to maintain a class of persons who are automatically sanctioned?

(i) E.g. for Entities should the Associate relationship be maintained to ensure subsidiary companies remain sanctioned and thereby preventing the use of shell companies as a tool for sanctions evasion? If yes in principle, are there any changes you would recommend to help make compliance more straightforward?

(ii) E.g. should the RSA/RSR maintain the use of Associates when duty holders are undertaking due diligence and identify an agent is being used by a sanctioned person? If yes, do you have any recommendations on how best to do this?

Designation Notices

The Secretary of Foreign Affairs may give Designation Notices pursuant to section 11 of the RSA. Designation notices provide further details on individuals, entities, assets, or services that have already been sanctioned. These details are also included in the sanctions register.

The RSA refers to designation notices as secondary legislation. In practice they are primarily used for clarification purposes only and do not to designate or sanction persons themselves.

25. Is the status of designation notices sufficiently clear?

26. Are the designation notices on the MFAT website useful?



Topic 4: Extraterritoriality

Under the statutory framework, there is a general requirement that the following groups must comply with sanctions:

- All individuals in New Zealand regardless of their nationality or resident status.
- All New Zealanders (citizens and those ordinarily resident in New Zealand) no matter where they are in the world.
- All New Zealand businesses and organisations no matter where they are operating in the world.
- All overseas businesses registered in New Zealand in respect of their activities connected to New Zealand. This includes the overseas activities of a New Zealand branch.

There is a strong policy basis for extending the RSA's reach outside of New Zealand. The aim of extending the scheme is to ensure that all New Zealanders and New Zealand businesses, wherever they are, do not provide support to Russia's illegal invasion of Ukraine.

Given the extension of jurisdiction to New Zealanders overseas and also businesses which may be registered in New Zealand, but which have no connection to New Zealand, we ask the following questions:

27. Is the extraterritorial application of the RSA appropriate?

28. Is the extraterritorial nature of the RSA, including its application to New Zealanders resident overseas, stated with sufficient clarity?

29. Are the exceptions listed in regulation 12 of the RSR, and the process for the revocation, amendment, or exemption in section 13 of the RSA, in respect of extraterritorial application operating adequately? If not, how might they be improved?

30. Should there be a nexus to New Zealand in order for an entity to be regulated (see - sections 4 and 26)?



Topic 5: Investigation and Enforcement

31. Is the RSA sufficiently clear about the respective roles of New Zealand Police, Customs, AML/CFT Supervisors and MFAT in terms of investigations of potential sanction breaches?
32. Should MFAT as the regulator have information gathering powers to assist with investigations in New Zealand or overseas?
33. When duty holders submit a SAR which is unclear or ambiguous as to whether it relates to a breach of the AML/CFT Act or the RSA would it be appropriate for that information reported under one regime, to be used for the purpose of the other regime?



Topic 6: Review and Oversight of Sanctions

Review and oversight of Decisions made pursuant to the RSA.

Section 13 of the RSA allows people to apply to the Minister for a sanction to be amended or revoked, or to be exempted from the sanction, in certain circumstances. The RSA does not contain any other review or appeal mechanism.

34. Should section 13 be amended to make it explicit that the Minister can reconsider sanctions at their own initiative?

35. Are there ways in which the section 13 process could be improved?

36. Do you have any other feedback on applications for amendment, revocation, or exemptions under the RSA?

Review and oversight of Duty Holder compliance with the RSA.

The RSA did not establish a statutory body to review or oversee the compliance of duty holders with their statutory responsibilities.

37. Should other oversight bodies (e.g. under the Banking Ombudsman Scheme) have jurisdiction in respect of RSA-related matters? If yes, how should such bodies best liaise with MFAT and NZ Police, in light of their responsibilities under the RSA?

38. Do you have any other comments about the interaction between the RSA's regulatory framework and other oversight bodies (including in respect of non-duty holders)?



Topic 7: Prohibitions

The RSA places a range of obligations on all New Zealanders by prohibiting or restricting specific activities under the RSR.

Sanctions target individuals and entities (businesses and organisations) that are of economic or strategic importance to Russia. Since March 2022, sanctions have been placed on over 1,000 individuals and entities. Sanctions have also been applied on specified assets and services.

Asset Freeze

Regulations 10(2) and (3) implement prohibitions on dealing with assets in relation to sanctioned persons. Regulation 11(2)(a) and (b) implement prohibitions on dealing with services in relation to sanctioned persons. Taken together, these prohibitions effectively implement an asset freeze (i.e. an obligation not to deal). For example, if a duty holder has a sanctioned asset under their control, they must cease all activity by freezing the asset. If a duty holder is currently providing services to a sanctioned person or entity, they must cease all activity by stopping any transactions or services involving the sanctioned person or entity.

39. Should there be a more explicit obligation to freeze assets or services, in addition to the prohibitions not to deal with assets and services? If yes, why?
40. Should there be an explicit obligation to freeze assets or services in circumstances where there are reasonable grounds to suspect? If yes, do you foresee any issues with such an approach?
41. Should there be statutory processes that specify how to deal with the range of assets that may be frozen e.g. super yachts and cash? If yes, do you have any suggestions about any appropriate processes?

Prohibited Exports

Regulation 13 prohibits a New Zealand person from exporting specified goods either directly or indirectly, to, or for use in, or for the benefit of Russia [or Belarus]. The inclusion of 'indirectly', 'for use in', and 'for the benefit of' intends to capture any activity which may seek to evade the export prohibitions, for example, by exporting goods through a third country i.e. the goods are sold to an entity in a third country and exported there only to be shipped on to Russia.

42. Are the terms "indirectly", "for use in" and/or "for the benefit of" sufficiently clear as to the type of activity captured?
43. Are there any other terms in the export prohibitions that could be improved either by amendment or further guidance?



Prohibited Imports

Regulation 14A prohibits a person from importing specified goods, either directly or indirectly, of Russian origin into New Zealand. The use of “indirectly” in the prohibition intends to capture any activity which may seek to evade the import prohibitions, for example, by importing goods of Russian origin from a third country.

44. Is it clear what is meant by importing “indirectly” and the type of activity captured?

45. Is it clear what is meant by “Russian origin”?

46. Should there be an exception to the prohibition of Russian imported goods for goods exported from Russia prior to 1991?

HS Codes

The prohibited imports and exports in regulation 13 and 14A are implemented through the Harmonised System (HS) Codes. These HS Codes are listed in schedules to the regulations. If the HS Code of a good intended for import and/or export falls within one of the HS Codes listed in the relevant schedules, then it is prohibited for import and/or export.

For example, “luxury goods”, for the purpose of the import and export prohibitions, is defined by the HS Codes listed in Schedule 1A.⁷ It is prohibited for a New Zealand person to import vodka (HS Code 22086000) of Russian origin, because the HS Code for vodka falls within the broader HS Code 22.08 listed in Schedule 1A.

47. Is the current usage of the HS code system for the purposes of the RSA appropriate and clear?

48. Are there any HS Codes which you believe should not be included in any of the Schedules related to the import and/or export prohibitions under the RSA? If so, why?

49. If the regulations did not use HS codes, then an alternative would be to have a list of prohibited goods, similar to the Export Controls Strategic Goods List. What are your views on such an approach?

Sanctions Evasion

Sanctions evasion is the act of avoiding or circumventing sanctions. It can involve concealing or shielding sanctioned entities and individuals. Sanctions evasion activity can disguise ownership, the origin of assets and funds, or the ultimate destination of export goods. Common evasion methods are to move funds to agents, relatives or shell companies, or to route business transactions through third countries and new accounts.

To counter sanctions evasion behaviour, the RSA and RSR use a range of terms and concepts to capture behaviour that is often associated with sanctions evasion. For example,

⁷ Regulation 5(1) of the RSR



by capturing *indirect* exports, or dealings *for the benefit* of a sanctioned person. While some of the prohibitions seek to capture behaviour associated with sanctions evasion, there is no explicit prohibition on sanctions evasion itself.

50. Should the RSA/RSR include an express prohibition of sanctions evasion?

51. If yes, how would such a prohibition impact compliance?

Exceptions from the application of sanctions

Regulation 12 contains exceptions for when dealing with assets and services, ordinarily prohibited by regulations 10, 10A and 11, is permitted. For example, holding a bank account with a sanctioned person, providing legal services in connection with the RSA, or facilitating the normal performance of diplomatic functions or obligations that existed prior to the sanctions. In this context we would be interested in:

52. Is regulation 12 clear to interpret and apply?

53. Whether the circumstances specified in regulation 12 capture appropriate situations where the prohibitions and restrictions imposed by 10, 10 A and 11 should not apply?

54. Specifically, and based on feedback to date, should regulation 12(7)(b) in relation to legal services be broadened to cover New Zealanders overseas providing legal services in circumstances which are consistent with access to justice, but which are currently not within the exception?

55. Are there any other exceptions in regulation 12 which could be improved or clarified?

Exceptions to Export and Import Prohibitions

Under regulation 14(1) a New Zealand person may export, directly or indirectly, an asset to, or for use in, or for the benefit of Russia or Belarus if the person does so in good faith for a humanitarian purpose and in doing so is consistent with the purposes of these regulations. Under regulation 14(2) a New Zealand person may export, directly or indirectly, a luxury good to, or for use in, or for the benefit of Russia if the luxury good is a personal effect⁸. Under regulation 14B a New Zealand person may import a luxury good of Russian origin into New Zealand if the luxury good is a personal effect.

56. Are there any issues with the exceptions described above?

57. Are there any other situations that should be added to the exceptions in regulation 14 and 14B?

⁸ Personal effect is defined in regulation 5(5) of the RSR.



Humanitarian Organisations Exception - Regulation 18

Regulation 18(1) provides that sanctions imposed by the regulations do not apply in relation to a humanitarian organisation carrying out its humanitarian activities.

Humanitarian organisation is defined in regulation 18(2) to include the United Nations (including its programmes, funds, other entities and bodies, specialised agencies, and related organisations); the International Red Cross and Red Crescent Movement; and a non-governmental organisation accredited under the New Zealand Disaster Response Partnership (as listed [here](#)).

This exception is broad and applies to all sanctions. It is not limited for example to the exception in regulation 14(1) for assets that are exported in good faith and for a humanitarian purpose. Within this context:

58. Do you have any views on the definition of humanitarian organisation in regulation 18(2)? Are there any other bodies you think should be added?

Other Exceptions

59. In addition to the situations listed above, we would be interested in any other comments regarding the use of exceptions in the RSR.



Topic 8: Definitions and Terminology

The RSA and RSR use a range of terms and concepts. The following questions are related to the use of these.

Dealing with Assets and Dealing with Services

“Dealing with assets” and “dealing with services” are defined in section 5 of the RSA. These terms capture a wide range of activities that are subject to the prohibitions in regulation 10 (the prohibition on dealing with assets of, or for benefit of, sanctioned persons) and regulation 11 (the prohibition on dealing with services). Regulation 10A is the prohibition on dealing with a security of a sanctioned person. The legislation does not contain a definition for “dealing with a security”.

60. Is the definition of “dealing with assets” in section 5 of the RSA sufficiently clear?

61. Is the definition of “dealing with services” in section 5 of the RSA sufficiently clear?

62. Should “dealing with a security” be separately defined, and if so, why?

For the benefit of

Under regulation 10(3)(b), a New Zealand person must not deal with any asset if dealing with the asset would otherwise be “for the benefit of” a sanctioned person. A similar prohibition is in regulation 10A(2)(c) in respect of dealing with securities of a sanctioned person. In addition, under regulation 11(2)(b) a New Zealand person must not deal with a service that is provided to, or “for the benefit of”, a sanctioned person. The use of “for the benefit of” in these three prohibitions intends to widen the prohibition and capture more dealings than would otherwise be captured.

In relation to each of those prohibitions:

63. Is it sufficiently clear what is covered by “for the benefit of” in the each of circumstances outlined above?

64. Do you have any other views on “for the benefit of” as it relates to these prohibitions?

Designated

Regulation 4 defines designated persons, assets, and services for the purposes of the RSA.

Classifying a person, asset, or service as designated for the purposes of the RSA has several practical effects. The first is that descriptions of any designated person, designated asset, and designated service must be included in the Sanctions Register that MFAT must maintain under section 14 of the Act. The second is that a person, asset, or service classified as designated is captured by the duty to report under section 15 of the RSA.



In light of that context, we would be interested in:

65. Whether the current definitions are sufficiently clear about which persons, assets, and services are 'designated'?

66. Whether there is sufficient clarity about what the effect of a 'designated' classification is?

Sanction and Sanctioned Person

"Sanction" is defined in section 6 of the RSA as a prohibition or restriction imposed by or under regulations made under section 9 in relation to persons travelling to, entering, or remaining in New Zealand; dealing with assets; or dealing with services.

"Sanctioned person" refers to a person who is, or is in a class of persons that is, listed in Schedule 2 of the RSR. A sanctioned person is subject to the regulations that are specified in Schedule 2 as being applicable to them.

In light of this, we would be interested:

67. Are the terms 'sanction' and 'sanctioned' sufficiently clear?

68. Is there any uncertainty as to how the terms 'sanction' and 'sanctioned' relate to the 'designated' classification?

Other terms and concepts in the legislation

69. Is there any other terminology in the RSA/RSR which pose issues in terms of interpretation or ambiguity?

70. Are there any terms in the RSA/RSR which could benefit from definition?



Annex 1 - Terms of Reference for the Russia Sanctions Act 2022 Statutory Review

Background

The New Zealand Parliament unanimously passed the Russia Sanctions Act (**RSA**) on 9 March 2022, following Russia's illegal invasion of Ukraine on 24 February 2022. The RSA gives the Minister of Foreign Affairs the ability to impose sanctions in response to threats to the sovereignty or territorial integrity of Ukraine or another country.

The RSA created a legislative framework for New Zealand to demonstrate its condemnation of Russia's invasion of Ukraine in 2022. The purpose of the Act is to:

- Enable New Zealand to impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia).

The RSA is intended to create a system that, together with the sanctions imposed by New Zealand's international partners, pressures Russia, and others that support Russia, to change course without the need to use armed force. The RSA is also intended to ensure that New Zealanders do not support (advertently or inadvertently, directly, or indirectly) Russia's invasion.

The Objectives of the Statutory Review

This review is required by section 29 of the RSA. The Minister is required to review the operation and effectiveness of the Act and present a report on the review to the House of Representatives. The review presents an opportunity to assess the operation of the legislation and provide recommendations on how it could be improved.

Scope of the Review

The review is focused on the operation and effectiveness of the RSA. Broader questions, such as the merits and efficacy of sanctions generally, and whether New Zealand should have a general autonomous sanctions regime, are outside the scope of this review.

In summary the review will assess:

- How has the RSA been operating since it came into force on 9 March 2022?
- How effective is the RSA, and is it fit for purpose?
- Does the RSA strike the appropriate balance between the risk of sanction evasion in New Zealand and the RSA's compliance costs?
- Does the RSA achieve its statutory purposes?

We would also welcome feedback on:

- What is it like to use and interact with the RSA?
- How do you find the mechanics of the RSA and RSR work in practice?
- What is not working satisfactorily?



- What could be done better?

We will consider the operation of the Russia Sanctions Regulations 2022 as part of the Review.

Principles to guide the Review

The following principles will guide the Review:

- Imposing and enforcing sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia) to demonstrate New Zealand's condemnation.
- Reducing the risk that New Zealand individuals and businesses may breach sanctions or be used to evade sanctions.
- Ensuring New Zealand is not perceived as a soft route to evade sanctions imposed by other countries.
- Ensuring any non-compliance, breaches or evasions are dealt with swiftly and effectively by making best use of New Zealand's existing regulatory and enforcement frameworks.
- Managing, as appropriate, disproportionate impacts on New Zealand individuals and businesses.

Process for the Review

The Review process will be conducted by MFAT officials and will include:

- The collection of views on the operation and effectiveness of the Act. This will be done through consultation with government agencies and affected stakeholders.
- Identifying how the statutory framework may be improved.
- Analysis of the feedback on the RSA which will be fed into the final report on the outcome of the review, to be presented by the Minister to the House of Representatives.



Annex 2 – Agencies and their Roles

	Agency	Role
System strategy and policy	MFAT	<ul style="list-style-type: none"> Has policy functions in relation to Russia sanctions including drafting advice on new sanctions Leads oversight of the system
	NZ Customs, Immigration NZ, Overseas Investment Office, NZ Police, MBIE, RBNZ, DIA, FMA, Treasury, others	<ul style="list-style-type: none"> Are consulted during policy-making Contributes to oversight of the system
	Ministry of Justice	<ul style="list-style-type: none"> Lead agency for coordination of Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) matters Leads the review of the scope of the AML/CFT Act to potentially include financial sanctions
Advice, education and information	MFAT	<ul style="list-style-type: none"> Produces guidance and information for regulated communities and responds to enquiries from the public
	Ministry of Transport	<ul style="list-style-type: none"> Produces guidance and information in relation to transport sanctions
	Immigration NZ	<ul style="list-style-type: none"> Produces guidance and information in relation to travel bans
	NZ Police	<ul style="list-style-type: none"> Produces guidance and information for duty holders (who have an obligation to report suspicious activity) and the public
	Others (for example MBIE, NZ Trade & Enterprise)	<ul style="list-style-type: none"> Works with MFAT to support development of guidance and enable outreach to various groups, especially those who have existing relationships with regulated communities
Delivery of services	MFAT	<ul style="list-style-type: none"> Maintains the Sanctions Register Facilitates applications for exemptions, amendments and revocations with the Minister of Foreign Affairs or a person that has been delegated powers to grant these changes Facilitates the removal of designations (people and entities) with the Minister of Foreign Affairs
Compliance and enforcement	MFAT	<ul style="list-style-type: none"> Coordination and governance of the compliance and enforcement system; information sharing with other relevant agencies Receives information from NZ Police and other agencies on suspicious sanctions related activities
	NZ Customs	<ul style="list-style-type: none"> Leads enforcement activity related to trade sanctions
	Immigration NZ	<ul style="list-style-type: none"> Leads enforcement activity related to travel bans
	NZ Police	<ul style="list-style-type: none"> Leads enforcement activity related to assets, services and securities sanctions Collects reporting on suspicious sanctions related activity
	Others (for example MBIE, NZ Trade & Enterprise)	<ul style="list-style-type: none"> Shares information in accordance with relevant legislation, including the Russia Sanctions Act Supports responses to potential sanctions breaches Undertakes secondary activity, in line with their relevant legislative powers, that support regulated community compliance with sanctions
Monitor and evaluate	MFAT	<ul style="list-style-type: none"> Monitors and evaluates policy settings Keep under review the law and practices of people that must comply with the law Monitors and evaluates operational settings and makes improvements to the system
	Others (for example MBIE, NZ Trade & Enterprise)	<ul style="list-style-type: none"> Provides information on how well the system is working, particularly those parts that they control Contributes to improvements and oversight of the system
Extending or dismantling the system	MFAT	<ul style="list-style-type: none"> Provides policy advice to Ministers on extending sanctions regulations beyond March 2025 and/or dismantling the system

