



Guidance Note for New Zealand banks: Russia sanctions and financial transactions

This note is intended to provide guidance to New Zealand banks in relation to transactions involving their customers in New Zealand and persons in Russia. It is intended to provide guidance in relation to the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022 and should be read in conjunction with the Act and the Regulations.

This note does not constitute legal advice. It is not intended to provide guidance in relation to compliance with other international sanctions regimes relating to Russia.

Relevant provisions of *Russia Sanctions Act 2022 (the Act)* and its *Russia Sanctions Regulations 2022 (the Regulations)*

Prohibitions

- Regulation 10(2): subject to regulation 12, a New Zealand person (individual or entity) must not deal with an asset that is owned or controlled by a sanctioned person.
- Regulation 10(3): subject to regulation 12, a New Zealand person must not deal with any asset if doing so would:
 - result in a sanctioned person owning or controlling the asset; or
 - otherwise be for the benefit of a sanctioned person.

Exceptions

- Regulation 12(2): a New Zealand person may hold and use a bank account with a sanctioned person if they held the account immediately before the relevant date.
- Regulation 12(3): a New Zealand person may receive money that is a restricted asset if, immediately before the relevant date, the person from whom it is received had a legal obligation to pay (whether at that time or in the future) the money to the New Zealand person.

Definitions

- “person” means an individual or an entity, including a bank.
- “restricted asset” means an asset referred to in regulation 10(2), or (3) (or 10A(1)(b)).
- “sanctioned person” is a person, or someone in a class of persons that is listed in Schedule 2 of the Regulations.
 - » New Zealand has designated a number of Russian persons, including individual banks and financial entities. The full list of individuals and entities can be found on the Sanctions Register (available on MFAT’s [website](#)).

Application to incoming transactions from Russia which involve a sanctioned bank

All holdings of a sanctioned person are “restricted assets” for the purpose of the Regulations and any funds that are transferred from a sanctioned bank to a New Zealand bank are therefore “restricted assets” under regulations 10 and 12.

Dealing with restricted assets is prohibited by regulation 10, however regulation 12(3) allows a New Zealand bank to release funds received from any person in Russia (even if the transaction involved a sanctioned bank) as long as the following conditions are met:

- The intended recipient is not a sanctioned person nor is owned or controlled by a sanctioned person; and
- Immediately before the date the relevant Russian bank was sanctioned, it can be shown that the person from whom the transfer originated had a legal obligation to pay the money, whether at that time or in the future, to the New Zealand person.

The legal obligation to pay may be statutory or contractual in nature. It must be an obligation to pay the money represented by the transfer (and not, for example, an obligation to deliver or perform another function that is later modified to be a payment of funds).

Incoming transactions from a party in Russia must be frozen by the bank when the intended recipient is a sanctioned individual or entity, or is controlled by or acting for the benefit of a sanctioned individual or entity.

Example 1:

Individual A in New Zealand receives a Russian pension. The Russian bank processing the pension payment is sanctioned by New Zealand. Individual A is the intended recipient and is not sanctioned by New Zealand.

- » The New Zealand bank can make available the pension payments to Individual A, as the proposed payment is in line with a previous pattern and Individual A is able to prove that he/she is legally entitled to the arrangement [or can provide evidence of the nature of the pension, for example an annual statement].

Example 2:

New Zealand Company X exported a shipment of goods in January and is accordingly owed funds by Russian Company Y following receipt of the goods. The contract that requires the payment was executed in January 2022. Company X and Company Y are not sanctioned by New Zealand, owned or controlled by a sanctioned person, or otherwise providing a benefit to a sanctioned person, and the transaction is not prohibited by New Zealand’s export prohibitions and trade measures. The funds for the payment are held in a sanctioned Russian bank and/or will be transferred or processed by a sanctioned Russian bank.

- » The New Zealand bank can make available the funds received to Company X, as Company Y had the legal obligation to make the payment before the date the Russian bank was sanctioned.

Example 3:

New Zealand Company X ordered a shipment of goods in January 2022 from Russian Company Y and paid for the goods at the time the contract was executed. Following imposition of the tariff increase by New Zealand, Company X wants to cancel the contract and get paid a refund. Company X and Company Y are not sanctioned by New Zealand, owned or controlled by a

sanctioned person, or otherwise providing a benefit to a sanctioned person, and the transaction is not prohibited by New Zealand's export prohibitions and trade measures. The funds for the payment are held in a sanctioned Russian bank and/or will be transferred or processed by a sanctioned Russian bank.

» The New Zealand bank must freeze the funds and report the transaction in accordance with section 15 of the Act. It must not make the funds available to Company X. This is because Company Y did not have a legal obligation to make the payment prior to the date the Russian bank was sanctioned.

Application to outgoing transactions to Russia

In accordance with regulation 10(3), a New Zealand person is prohibited from processing an outgoing transaction if doing so would result in a sanctioned person owning or controlling the funds or would otherwise benefit from the funds. This means a New Zealand bank cannot process an outgoing transaction from New Zealand to a sanctioned Russian bank.

The prohibition applies if a sanctioned person is involved at any stage of the transaction, either as a party processing the transaction or as the intended recipient. Whether a transaction is directly or indirectly to, or for the benefit of, a sanctioned person is a question of fact in each case.

Example 4:

Individual B in Russia receives a New Zealand pension. The Russian bank processing the pension payment is sanctioned by New Zealand. Individual B is the intended recipient and is not sanctioned by New Zealand.

» The New Zealand bank cannot process the outgoing payment to Individual B in Russia, as the Russian bank is sanctioned by New Zealand.

Example 5:

Individual C in New Zealand wants to make a payment to Individual D in Russia. Individual C and Individual D are not sanctioned by New Zealand. The Russian bank processing the payment is sanctioned by New Zealand.

» The New Zealand bank cannot process the outgoing payment to Individual D in Russia, as the Russian bank is sanctioned by New Zealand.

In both Examples 4 and 5, the New Zealand bank can process the payment if they can identify and work with a Russian bank that is not sanctioned by New Zealand, provided that they can be sure that the payment will be handled by a non-sanctioned Russian bank. This may require the individual receiving the payment to open an account with a Russian bank that is not sanctioned.

Other relevant information

We advise New Zealand banks to take all reasonable precautions and exercise due diligence to comply with New Zealand sanctions laws at all times when processing transactions.

We would expect in these circumstances that along with the standard due diligence processes, the bank should seek evidence from the intended recipient that the original transferor from whom the

funds are received had a legal obligation to make the payment in question (for example, an executed contract) immediately before the Russian bank was sanctioned. For example, a pattern of regular payments (such as automatic payments) from before the date the Russian bank was sanctioned could also be used as evidence that there was an ongoing obligation to make payments. This could be supplemented by other evidence, if necessary, such as an annual statement or proof of statutory obligation.

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