

A Review of the Russian Sanctions Regulatory Framework

Proactively Released by the Ministry of Foreign Affairs and Trade

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Contents

Executive summary and recommendations	4
Introduction	7
Context for Russia sanctions	8
Russia Sanctions Act.....	8
Making regulations	10
Assessing the regulatory system.....	11
Legislative mandate	11
MFAT’s system stewardship and governance.....	11
System design	12
Education, information, guidance, and engagement	13
Information and intelligence.....	14
Decision-making.....	15
Monitoring, compliance, and enforcement.....	16
Reporting.....	17
Developing tools, policies, and processes	17
Information Management, documentation and record keeping	18
Resourcing the sanctions regime.....	18
Annex One: Terms of Reference	20
Annex Two: Stakeholders interviewed	28

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Executive summary and recommendations

1. In February 2023, the Ministry of Foreign Affairs and Trade (MFAT) commissioned an independent review of the Russia Sanctions regulatory framework (including related policies, processes, systems and controls). The Terms of Reference require the reviewer to:
 - Comment on whether the regulatory framework has been effectively designed and implemented in accordance with the legislation
 - Provide recommendations for improvements to systems, policies or processes that may be relevant in the lead up to the 2024 review of the Russia Sanctions Act.
2. Russia invaded Ukraine on 24 February 2022.
3. Ministers wished to act rapidly post the invasion, in line with international partners. Most like-minded countries had existing legislative arrangements in place for autonomous sanctions; New Zealand did not.
4. The policy papers preceding introduction of the Russia Sanctions Bill set out New Zealand's objectives in responding to the Russian invasion: unequivocal condemnation,^{s6(a)} to apply pressure on Russian leadership and on the Russian economy,^{s9(2)(g)(i)} and minimising adverse impacts on (compliant) New Zealanders.
5. The Russia Sanctions Bill was developed and passed through the various legislative stages in Parliament in a matter of days. The legislation was, by design, broadly enabling of sanctions.^{s9(2)(g)(i)}
6. The first tranche of sanctions was announced on 18 March 2022.
7. The framework for giving effect to the Russia Sanctions Act (RSA) was developed over the subsequent months.
8. MFAT has taken a deliberate approach to building the various elements of a well-functioning regulatory system, which is maturing and embedding with the passage of time and the filling of gaps (such as through the documenting of operational procedures).

A fit-for-purpose regulatory system

9. Given the context (absence of autonomous sanctions regime, the need to move with extraordinary speed), the review concludes that MFAT has designed and implemented a fit-for-purpose regulatory system that is in accordance with the legislation.
10. The Taskforce sought expert advice at the outset to develop a system design that included the following elements:
 - Risk-based
 - Emphasis on self-compliance

- Monitoring and enforcement arrangements that leveraged existing resources (e.g. Customs for imports and exports, Immigration for travel).

11. The recommendations below identify opportunities for ongoing improvement to elements of the system and risks that will require careful management.

Outcomes to date

12. Quantitative and qualitative metrics relevant to considering progress against government's objectives in imposing sanctions include:

- Having started behind other countries because of the absence of an autonomous sanctions regime, New Zealand has now sanctioned individuals and entities at a level that is broadly consistent (allowing for New Zealand's comparatively limited economic ties with Russia pre-invasion) with the scope of sanctions in like-minded countries
- Economic connections between the two countries have reduced materially. MFAT advises that:
 - i. From April to December 2022, New Zealand exports to Russia were down 80% compared to the same three quarters in 2021 (from \$196.8 million to \$39.7 million). Reasons include voluntary choices by New Zealand businesses (e.g., Fonterra withdrawing from Russia), other sanctions regimes which impact multi-national businesses (notably the main New Zealand banks) and the New Zealand sanctions.
 - ii. Since the imposition of the 35% import tariff in April 2022, goods imports from Russia have dropped by 99% (from \$4.8 million in April 2022 to \$62,000 in February 2023).

- s6(a)

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- s9(2)(g)(i)

- s9(2)(g)(i)

- s9(2)(g)(i)

13. Achieving these outcomes in the face of extreme time pressures and no new money is a singular achievement.

14. s9(2)(g)(i)

15. Feedback from interviewees emphasised the quality of MFAT's leadership and collaborative approach (co-design, co-implementation) to the work of the Taskforce, and of the commitment to the cause ('being on the right side of history') shown by all participating agencies.

Recommendations on areas for future focus

16. The review has identified several areas that warrant ongoing focus from MFAT leadership and from the Russia Sanctions team, over the next phase of the regime's operation (these challenges and opportunities are already on the radar of the sanctions team):
 1. Continue to work with regulated entities and their representatives and advisers to develop guidance that makes compliance as easy and compliance costs as low as is practicable (while still leaving risks where they are best managed).^{s9(2)(g)(i)}
 2. Make the regime more responsive e.g., in providing guidance on new classes of sanction concurrent with or very soon after the sanctions are introduced and setting target times for resolution of inquiries
 3. Review the application of definitions and thresholds within the regulations, which may be capturing some activities unnecessarily or where enforcement is not feasible. A recent example is the decision to introduce a threshold for luxury goods with a value of less than \$1000 (apart from goods such as alcohol and caviar) which will be exempt from sanctions
 4. Continue to test appetite for risk (e.g., in deciding on the depth of analysis required before making recommendations to Ministers for new sanctions and in providing more specific guidance to regulated entities while stopping short of legal advice)
 5. Continue to work through the complications associated with financial sanctions and the relationship between Russia sanctions and the Anti-Money Laundering and Countering of Financial Terrorism regulatory systems
 6. Maintain a focus on systematic environmental scanning to enable early identification of emerging risks and possible changes to the scope of the regime
 7. Consider more public reporting of relevant dimensions of the regime, to promote transparency and awareness
 8. Ensure clear accountabilities within the Russia sanctions team to maintain and improve the regulatory system, including the suite of supporting tools, policies and processes and a structured approach to assessing risks
 9. Take a deliberate approach to the challenge of maintaining a fit-for-purpose culture for an end-to-end regulatory operation embedded within Legal Division and of maintaining sufficient institutional knowledge in an organisation for which regular staff rotation is the norm
 10. Develop a plan for an integrated review of the regulatory system, encompassing the statutory review of the legislation (which, under the Act, must commence by March 2024), the regulations, design and operation of the system, and resourcing (current

funding is through to mid-2024). The review would likely need to commence in the second half of 2023 to allow for sufficient engagement with partner agencies and regulated communities.

Introduction

17. In February 2023, MFAT commissioned an independent review of the Russia Sanctions regulatory framework (including related policies, processes, systems and controls) and comment on whether the framework has been effectively designed and implemented in accordance with the legislation. The review was to consider the following design aspects:
 - Legislative mandate and application
 - Framework, policies and processes
 - Analysis and assessment, to support sound and consistent decision-making
 - Information dependencies
 - Decisions, escalation and exception management
 - Record keeping and documentation.
18. The review was also to provide recommendations for improvements to systems, policies or processes that may be relevant in the lead up to the 2024 review of the Russia Sanctions Act.
19. The full Terms of Reference is contained in Annex One.
20. In undertaking the review, I have:
 - Reviewed documents relevant to the Russia Sanctions regime
 - Interviewed people who have been involved in the design and implementation of Russia sanctions from MFAT and other contributing agencies (Annex Two)
21. I have appreciated the openness of all interviewees and the willingness of Taskforce members to answer many questions.
22. The scope of the review did not extend to interviewing New Zealand parties impacted by the regime e.g. financial institutions, importers and exporters.
23. The primary focus of the review is on the regulatory system as it is now and looking ahead. MFAT has undertaken a 'lessons learned' review of how the regime was established and developed to this point, including learnings relevant to working under intense time pressure and much uncertainty.
24. The structure of this report is as follows:
 - Context for Russia sanctions
 - Legislative framework for the sanctions and its application in introducing specific sanctions
 - MFAT's design of the regulatory system

- Assessment of the various elements of the regulatory system as it stands against a set of good practice benchmarks, drawing on the insights of interviewees

25. Recommendations on areas of focus for the future are set out in the Executive Summary.

Context for Russia sanctions

26. Russia invaded Ukraine on 24 February 2022.
27. Condemnation by the international community followed immediately.
28. New Zealand co-sponsored a United Nations (UN) Security Council Resolution on 25 February condemning Russia's invasion.
29. Economic sanctions quickly followed. Some nations already had sanctions in place against Russia subsequent to the occupation of Crimea in 2014, typically through utilising pre-existing legislative provision for autonomous sanctions against individual countries.
30. New Zealand's approach to date on sanctions had been to participate in UN action but not to establish an autonomous sanctions regime.
31. New Zealand's initial response to Russia's invasion of Ukraine included travel bans under the Immigration Act and export controls under the Customs and Excise Act.
32. The New Zealand Government wished to send a clear and early signal against Russia, to be part of international action and to ensure New Zealand was not a potential location to hold money and assets sanctioned by other countries.

Russia Sanctions Act

33. Having decided to join the international action on sanctions, Ministers wanted to move as quickly as possible.
34. MFAT began policy work in late-February 2022. The architecture of the new legislation was based on the Autonomous Sanctions Bill, which had previously been considered (but not passed) by Parliament.
35. On 7 March 2022, Cabinet agreed (amongst other things)¹ that:
- New Zealand should implement sanctions in order to support the collective efforts of the international community
 - Government should progress specific sanctions legislation, a Russia Sanctions Bill, targeted at Russia and any country complicit in its aggression (e.g. Belarus)
36. On 11 March 2022, the Russia Sanctions Bill became law, with support from all members of Parliament.

Part 2 of the Act: Sanctions

37. The purpose of RSA 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).

¹ CAB-22-MIN-0058

38. The Act empowers regulations that may apply to:
- Persons travelling to, entering, or remaining in New Zealand
 - Dealing with assets or services, including by New Zealand citizens outside New Zealand.
39. The Act sets out a threshold for recommending sanction - a response is appropriate (amongst other things) if:
- Designed to exert pressure on Russia (or a country that may be assisting Russia) including by interrupting economic relations
 - It complements or reinforces sanctions by other countries
 - The United Nations Security Council is unlikely to take sufficient action.
40. The Act provides for the making of regulations and designation notices. Prohibitions and restrictions can be imposed on or in relation to:
- Designated persons (which can include prohibitions on non-New Zealand citizens entering or remaining in New Zealand)
 - Specified dealing with designated assets and designated services.
41. Regulations in relation to a designated person may extend to associates or relatives.
42. Any person may apply to the Minister, on humanitarian or other grounds, for:
- Amendment or revocation of a regulation or designation
 - Exemption from a sanction for a particular specified situation.
43. Duty holders under the Anti Money Laundering and Countering Financing of Terrorism Act (and if defined to be so under the Russia Sanctions Act) are required to report any suspicions (of a breach of sanctions) to the Commissioner of Police. The Commissioner may share the information with MFAT and with other government agencies, for the purposes of the Act.

Part 3 of the Act: Enforcement

44. Part 3 of the Act contains enforcement provisions, which include civil (with provision for enforceable undertakings and injunctions) and criminal. The provisions of the Customs and Excise Act relating to prohibition of exports and imports apply for sanctioned assets.

Part 4 of the Act: Review of Act and miscellaneous provisions

45. The Minister must commence a review of the Act two years after commencement.
46. The Act sets out:
- Information gathering and sharing powers for the Police Commissioner
 - Provisions for government agencies to disclose information to MFAT relevant to the making and enforcing of and compliance with sanctions made under the Act.
47. The Act is administered by the Ministry of Foreign Affairs and Trade.

Making regulations

48. RSA provides for sanctions of persons (individuals or entities, assets and services). Sanctions can be imposed on one or more of travel and transport (air and sea), financial assets and trade (goods and services).
49. Sanctions can apply to primary sanctioned persons (listed by name or that fall within a listed class) and to their associates and relatives.
50. Regulations can provide for exceptions, for example where a sanction is having an unintended or disproportionate impact on New Zealanders.
51. Designation notices (made by the Secretary of MFAT) provide further details on persons, assets or services already sanctioned.
52. Sanctions introduced by regulation will expire on 17 March 2025 unless extended to a later date (or have been revoked before that date).
53. The process for introducing regulations under the Act involves:
 - Cabinet delegating to a group of Ministers with powers to act to agree categories of sanction
 - The Minister of Foreign Affairs making decisions on MFAT recommendations for individuals or entities to be sanctioned within each of the agreed categories
 - MFAT preparing advice to the Minister recommending sanctions, supported by information sheets for each recommendation
 - MFAT supporting PCO in the drafting and gazetting (with a foreshortened notice period) of the regulations.
54. At officials' level, MFAT established an inter-agency group to facilitate information gathering and sharing, and to work through options for and consequences of potential action on sanctions (including in relation to compliance and enforcement and potential impacts on New Zealanders).
55. The first tranche of sanctions was announced on 18 March 2022 and applied to political, military and economic elites and entities. 16 further tranches were announced before the end of 2022, with a further three tranches in the first three months of 2023. Notable extensions of the scope of sanctions have included:
 - Trade-related (6 April): application of a 35% tariff on imports of Russian origin and extension of the prohibition on export of strategic products to Russia and Belarus
 - Russian financial institutions (19 April)
 - Russian disinformation and malicious cyber actors (10 May)
 - Russian state-owned enterprises and other companies of strategic importance (7 June)

- Expanded trade measures (ban on luxury goods, oil, gas and coal) and oligarchs - including Alexander Abramov, the one oligarch with significant connections to New Zealand (11 September)
 - Iranian targets – military leaders, a drone manufacturer (14 December).
56. As of 13 April 2023, the MFAT website lists 1170 individuals and 344 entities as being subject to some level of sanctions.
57. s6(a)

Assessing the regulatory system

58. MFAT and its government agency partners have progressively built the regulatory system in the year since RSA was passed.
59. The following sections of this report comment on:
- Whether the Russian sanctions regulatory framework has been effectively designed and implemented in accordance with provisions of the Act
 - Each of the main component parts of the regulatory system.
60. Comments are informed by the views of interviewees.

Legislative mandate

61. The purpose of RSA is to enable New Zealand to impose and enforce sanctions in response to military action by Russia.
62. MFAT interviewees advised that the Act was intentionally drafted to provide broad powers to introduce sanctions through regulation. s6(a)
63. RSA provisions on compliance and enforcement are high level and will likely be an area of focus in the statutory review of the legislation in 2024.

MFAT's system stewardship and governance

64. Russian sanctions were established in great haste. The duration of the war was (and is) unknown.
65. MFAT interviewees noted past experience that suggests that sanctions regimes often endure for long periods. An example is sanctions implemented by other countries following Russia's occupation of Crimea in 2014, which were still in effect at the time of Russia's invasion of Ukraine in 2022.
66. Regulatory stewardship is not a core MFAT function. MFAT is (understandably) not organised around the systems, processes and culture that underpin effective regulatory agencies.

67. MFAT leaders working on the sanctions regime decided early to build the new function with a view to the long term, utilising principles of good regulatory stewardship relevant to the context of Russia sanctions. Secondees and advisers to the Taskforce included several experienced regulatory practitioners covering policy, legal and operational dimensions.
68. MFAT established the cross-agency Tasking and Coordination Group (TCG) which has, over time, transitioned from a focus on operational matters to governance of the sanctions ecosystem. This evolution of TCG is a work-in-progress and is a critical element in sustaining the coherence of the system over time.
69. Active engagement by MFAT at senior levels will help ensure that partner agencies continue to nominate sufficiently senior people to TCG.

System design

70. The imperative to implement the sanctions regime at speed ^{s9(2)(g)(i)}
71. The minimalist nature of the legislation left MFAT scope to design a fit-for-purpose regime. ^{s6(a)}
72. A 29 August 2022 internal paper² summarised MFAT's thinking on proposed regulatory objectives and approach as the basis for a submission to the Minister on a fit-for-purpose implementation of Russia sanctions.
73. The proposed regulatory objectives flow from the Purpose of the Act:
 - Demonstrate New Zealand's condemnation of Russia's invasion of Ukraine
 - ^{s9(2)(g)(i)}
 - ^{s9(2)(g)(i)}
 - Ensure any non-compliance is dealt with swiftly and effectively.
74. Criteria against which to test the effectiveness of the regulatory design were effectiveness (in implementing and enforcing sanctions), compliance cost for the regulated population, cost to government, alignment with existing systems and proportionality of response.
75. The paper presents an analysis of the risks of breach (likelihood and consequence), to underpin regulatory design and allocation of scarce resources.
76. Historical interconnectedness of New Zealand and Russia is low, including limited trade, few Russian or Belarusian aircraft and vessels within New Zealand borders and modest financial flows.

² Implementing the Russia Sanctions Act and Regulations 2022. A paper to the Divisional Manager, RSG

77. s9(2)(g)(i)
78. The paper analyses the then-current activities to deter, detect and respond to sanctions breaches^{s6(c)}
79. The risk-based assessment of a low likelihood of a sanctions breach occurring, and the presence of existing regulatory system controls (e.g., immigration, trade, financial services) informs the proposed regulatory approach:
s6(c)

s6(c)

82. Consistent with good practice, the proposed approach to compliance and enforcement segments the regulated population into the (large) group that wants to comply (and will do if sufficiently informed) through to the small group that may seek to intentionally evade or breach sanctions (for which prosecution may be necessary).
83. The Taskforce has worked with partner agencies to develop a Regulatory Charter for the Russian sanctions regulatory system. The Charter sets out the purpose, scope, design and major components of the regulatory system, and describes roles of the various participating agencies.
84. Interviewees noted that the development of the Charter was a public sector exemplar, both the collaborative process and the resultant document. MFAT's leadership of the sanctions ecosystem will determine the extent to which the Charter remains a live document and has enduring value.

Education, information, guidance, and engagement

85. A regulatory system based on self-compliance relies on the regulated community being aware of the regime and able to access information and guidance on how to comply.

86. Agency websites are the primary channel for transmitting information to groups covered by the Russia sanctions. MFAT's website contains comprehensive information on the sanctions regime. Partner agency websites are a means of connecting with regulated communities (e.g., Customs and New Zealand Trade and Enterprise for exporters).
87. MFAT has set up a dedicated email address for inquiries relating to the sanctions regime. As of 31 January 2023, around 240 enquiries had been submitted, with five still open. The team has developed an operating procedure for responding to queries, which involves triage, information capture, answers to frequently asked questions and policy and/or legal input as required.
88. s9(2)(g)(i)

89. Interviewees discussed the tension between giving helpful guidance in response to queries while not providing legal advice. MFAT bears the legal risk associated with giving advice. Some agencies (notably the AML CFT supervisors) have provided input to MFAT but have not issued their own guidance.

s6(c), s9(2)(g)(i)

Information and intelligence

93. The sanctions regime is broad in its application, capturing all New Zealanders and businesses. Administering the regime requires risk-based allocation of scarce resources. Information and intelligence underpin monitoring of compliance, risk assessments, and decisions on whether to apply sanctions and to take enforcement action in the event of breaches.
94. s6(a)

95. The Act provides for the sharing of relevant intelligence by Police with MFAT (and with other government agencies). Interviewees confirmed that information sharing has been happening on an as-required basis.
96. MFAT and Police are negotiating an MoU to formalise information sharing arrangements. Interviewees noted that this has taken longer than anticipated but should be resolved soon.
97. s6(c)
98. The Taskforce has relied largely on open-source information in developing the evidentiary basis for new sanctions. Multiple agencies have contributed information to the building of an understanding of the financial interests and political connections of potential sanctions targets (including oligarchs and related entities).
99. Interviewees agreed that TCG is an effective clearing house for information exchange, albeit that this might better be done by a working group as TCG transitions to a focus on governance.

Decision-making

100. As noted above, the Minister of Foreign Affairs is the decision-maker in sanctioning individuals and entities, for categories of sanction that have been approved by Ministers with powers to act.
101. s6(a)
102. In cases that have New Zealand-specific dimensions, the Taskforce has typically undertaken detailed information gathering and analysis before preparing advice to Ministers.
103. s6(c)
104. s9(2)(g)(i)
105. s6(a), s9(2)(g)(i)

106. Decision-making and the supporting analysis should become more streamlined as MFAT and partners establish ways of working and become familiar with the principles used to underpin decisions. Some decisions may need to be revisited if, for example, experience shows the scope of a regulation has been defined too broadly or narrowly.
107. Evidence that MFAT has followed good process is in the review by Parliament's Regulations Review Committee of regulations made under the Russia Sanctions Act. The Committee has not identified first-order issues; where the Committee has questioned some aspects of MFAT's process, MFAT has responded constructively.
108. s9(2)(g)(i)

Monitoring, compliance, and enforcement

109. s6(c)
110. Monitoring is centralised at the system level (by MFAT and TCG) and distributed for each of the regulated communities (for example by Customs as steward of the Customs regulatory system) and is informed by the information sharing arrangements described above.
111. Interviewees advised that implementing trade (import and export prohibitions and the 35% tariff on imports) and travel restrictions was straightforward and effective within the provisions of the Customs and Immigration Acts. Both administering organisations have enforcement teams and established processes that are fit for purpose.
112. s6(c)
113. Interviewees were of the view that, based on information to date, the breaches were all minor and often unintentional (e.g., import of a prohibited luxury good where the purchaser might reasonably have been unaware that the good was of Russian origin).
114. The position for financial assets and services is more complex. The regulatory design of the sanctions regime envisaged monitoring and enforcement through leveraging the arrangements in place to administer AML CFT. In the event, scope for leverage has proven to be minimal.
115. Under AML CFT, duty holders (such as banks) are required to report suspicious activities to their regulatory supervisors and to act (such as by freezing financial assets) when they identify such things as illegal accounts (of sanctioned individuals).

116. Ministry of Justice is the system steward for AML CFT. Police operate the Financial Intelligence Unit and have power to take criminal action under the Act (or any related Act). Reserve Bank, Financial Markets Authority and Department of Internal Affairs have supervisory roles.
117. Under AML CFT, the supervisors have extensive powers to monitor and investigate compliance, including site visits and requiring provision of information. These powers do not extend to Russia sanctions.
118. Recent reviews of AML CFT have proposed that the scope of the Act be extended to encompass financial sanctions. Timing for any legislative change is uncertain but is likely to be several years.
119. If a duty holder freezes a financial asset for reasons related to Russia sanctions, what happens next (is the asset seized, by whom etc.) and how decision rights are distributed is unclear.
120. Non-financial services encompass a broad range of activities, sectors, and representative organisations. The Taskforce assessed the risk of material breach of sanctions to be low for non-financial services, reflecting limited interaction with sanctioned Russians (all of whom are prohibited from travelling to New Zealand), the practical difficulty of doing anything material in terms of a breach and lack of evidence of any breaches.
121. s6(c), s9(2)(g)(i)
122. To date, no enforcement actions have been taken under the RSA. A priority for MFAT and partners will be to maintain sufficient (and visible) focus on enforcement to maintain the credibility of the regime even in the absence of high-profile enforcement actions.

Reporting

123. Reporting on the sanctions regime to date has focused on the coverage of sanctions (categories) and the number of individuals and entities sanctioned.
124. MFAT may include other metrics relating to the regime in its annual report, which might be activity-based (e.g., number of queries responded to, or guidance notes issued) and impacts (e.g., on the extent of the economic relationship with Russia).
125. More reporting, and as much transparency as practicable about the operation of the regime becomes more important the longer sanctions are in effect.

Developing tools, policies, and processes

126. MFAT is developing a suite of policies and process maps to guide staff on how to deal with the various activities required in MFAT's administering of the RSA regulatory system. The purpose is to support understanding of how the regime has been operationalised, consistency of approach across cases and through time, and to maintain continuity as people come and go.
127. The process charts are clear and straightforward to follow.

128. Multiple interviewees commented favourably on the work of the design team within the Taskforce to develop all the foundations of a well-functioning regulatory system with a discipline and structure that is not required for MFAT's core functions.
129. The RST team tracks the status of these documents, several of which are still under development. Timely completion and discipline in reviewing and updating at appropriate intervals will underpin effective regulatory stewardship. Amongst other things, this will require named document owners, with appropriate accountabilities.

Information Management, documentation and record keeping

130. Administering a regulatory system requires disciplined capture and storage of information and records, for example to support informed and consistent decision-making over time and to provide a documentary record in the event of disputes and legal action.
131. The Taskforce has utilised MFAT's corporate information management system (Global Document Management (GDM)) to develop an architecture for information capture and storage to underpin the sanctions regime. The system provides for version control and can store information generated through multiple channels.
132. Some interviewees commented on limitations to GDM, but the functionality appears sufficient for the purpose of administering the Russia sanctions.
133. Organisational culture is central to the effectiveness with which information management systems are utilised. Interviewees noted that MFAT's general practice in information management may not be to the standard required of a regulator, but that the Taskforce has invested in training and awareness-raising as to the importance of consistent information management practices.
134. MFAT is considering a corporate Customer Relationship Management (CRM) system, which could be of value in supporting customer relationship management by the Russia Sanctions team.
135. Based on limited sampling, the Taskforce has documentation and record keeping that is fit for purpose. The documentary record on complex issues (such as whether to sanction the one Russian oligarch with significant New Zealand connections) is typically extensive.

Resourcing the sanctions regime

136. MFAT formed a Russia Sanctions Taskforce to progress the implementation of sanctions. Ministers had previously established an MFAT-led Ukraine Taskforce to coordinate all Ukraine-related actions (including military and humanitarian aid).
137. Initially the Sanctions Taskforce was led by a Deputy Secretary, and populated by a combination of MFAT staff, secondees from other government agencies (which met the cost of the secondments) and contractors.
138. The size and composition of the Taskforce has evolved over time. The Taskforce transitioned on 1 April to become a permanent team in MFAT's Legal Division, with responsibility for all sanctions-related matters (Russia, United Nations), which will enable some economies of scale and scope.

139. The various compliance and enforcement agencies (including Customs, Immigration, AML CFT supervisors) have integrated sanctions compliance and enforcement into their existing operations. ^{s6(c), s9(2)(g)(i)}

140. MFAT and other agencies with a role in supporting the operation of the sanctions regime (including Police, Customs, Immigration, Transport, Reserve Bank, Financial Markets Authority, Internal Affairs, Overseas Investment Office) have met sanctions-related costs from within baselines.

141. MFAT faces multiple pressures on its baseline. On 26 October 2022, the MFAT Board considered a paper from the Taskforce proposing resourcing levels for Russia sanctions post the team's transition into Legal Division as of 1 April 2023. The Board decided to commit resources to 30 June 2024, around the time of the statutory review of the Russia Sanctions Act, at a level of three permanent positions (policy and legal, education and engagement, compliance, and enforcement) and six fixed-term positions. ^{s9(2)(g)(i)}

142. ^{s9(2)(g)(i)}

143. Mid-2024 is a timely opportunity to review the full system in an integrated way: legislation, regulations, design, and resourcing.

Possible evolution of the Russia sanctions regime

144. New Zealand's Russia sanctions regime appears to be stabilising in the sense that the supporting organisational arrangements are maturing, and the rate of new sanctions is reducing.

145. The international community is monitoring the effectiveness of sanctions and related actions on the Russian leadership and military-industrial complex (and the implications for the Russian people).

146. Action against third-country actors has been limited to targeted sanctions of Belarus and Iran. ^{s6(a)}

147. MFAT is aware of and monitors this risk. Administering sanctions against other countries could require significantly more resources.

Annex One: Terms of Reference

Russia Sanctions Regulatory Framework Review

February 2023 – Final Version 16 February 2023

<p>Introduction</p>	<p>This document details the terms of a review of the Russia Sanctions regulatory framework.</p> <p>The Ministry’s Deputy Secretary Multilateral and Legal Affairs Group (DS MLG) has commissioned this review. It is also part of the 2022-23 Risk and Assurance Plan which has been approved by the Chief Executive and endorsed by MFAT’s Audit and Risk Committee.</p>
<p>Background</p>	<p>New Zealand has imposed sanctions on Russia in response to their illegal invasion of Ukraine. MFAT has stewardship responsibility for the Russia Sanctions Act and associated Regulations.</p> <p>Sanctions are designed to exert pressure on Russia to change its course of behaviour, including by interrupting economic relations and trade. They are most effective when they complement or reinforce sanctions by other countries.</p> <p>Our sanctions are aligned with those of like-minded countries from Asia Pacific, Europe and North America including Australia, Japan, the United Kingdom, the European Union, the United States and Canada.</p> <p>The Russia Sanctions Act 2022 and its Regulations 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. A history of the designations and changes to regulations can be found here Latest updates New Zealand Ministry of Foreign Affairs and Trade (mfat.govt.nz).</p> <p>The Act provides for applications for exemption, revocation or amendment for humanitarian purpose, or other reason. There are also exceptions under the regulations.</p> <p>Under the Russia Sanctions Act, New Zealand has:</p> <ul style="list-style-type: none"> • Applied the full range of sanctions on hundreds of individuals, including President Putin and permanent members of the Security Council of the Russian Federation, members of the State Duma and Federation Council who voted in favour of the recognition the independence of the Donetsk and Luhansk, political, economic and military elites, occupation officials, and disinformation and malicious cyber actors. • Sanctioned the branches and independent arms of service of the Russian Armed Forces, including logistical support. • Sanctioned defence entities that are part of Russia’s military industrial complex, freezing their assets, prohibiting financial dealings, and banning any related aircraft and ships from entering New Zealand. • Sanctioned key state-owned entities that provide export revenue to Russia, freezing their assets, prohibiting financial dealings, and banning any related aircraft and ships from entering New Zealand. • Sanctioned key banks and financial entities, freezing their assets, prohibiting financial dealings, and banning any related aircrafts and ships from entering New Zealand. • Banned Russian and Belarussian government and military aircraft and

ships from entering New Zealand.

- Applied a 35% tariff on all imports of Russian origin.
- Prohibited the export of a range of goods to Russia and Belarus, including products that are closely connected to strategic Russian industries.
- Banned the import of gold of Russian origin.
- Banned the export to and import from Russia of certain luxury goods.
- Banned the import of Russian origin oil, gas and coal.
- Banned the export to Russia of oil exploration and oil production goods.

There are currently seven types of prohibitions:

Travel bans Designated individuals are prohibited from traveling to, or transiting through New Zealand. The sanction may also affect an individual's visa status if they already have a visa.

Transport bans All Russian and Belarussian military and government owned or controlled aircraft and ships are banned from New Zealand airspace and waters.

Aircraft and ships owned, operated, or chartered by sanctioned individuals cannot enter New Zealand.

Assets (asset freeze) Asset freezes stop New Zealanders and New Zealand-based businesses, individuals and entities dealing with the assets of sanctioned individuals and entities. This prohibition does not apply to securities (as defined in the Regulations).

One effect of asset freezes is that designated individuals and entities and their associates are prevented from using any assets they hold in New Zealand. This includes bank accounts and personal property.

Asset freezes also prohibit New Zealanders and New Zealand-based businesses, individuals and entities from entering into financial transactions with, by, or on behalf of sanctioned individuals and entities.

Where a duty-holder (as defined under the Anti-Money Laundering and Countering Financing of Terrorism Act) is in possession or control of assets and suspects on reasonable grounds that these assets may be subject to sanctions measures, they have a duty to report it to the Police.

Note: asset freezes are not the same as asset seizures. There is no ability to seize assets in the Russia Sanctions Act.

Securities New Zealanders and New Zealand-based businesses are prohibited from dealing with a security of a sanctioned person if doing so would result in the sanctioned person acquiring the security, owning or controlling the security, or would otherwise be for the benefit of a sanctioned person.

The prohibition does not prevent a New Zealander from holding or disposing of such a security (as long as it is not to a sanctioned person).

Services This is a measure that prohibits, amongst other things, services being extended to, offered to, or received from sanctioned individuals or entities.

Where a duty-holder is dealing with services and suspects on reasonable grounds that the services may be subject to the sanctions measures, they have a duty to report it to the Police.

Exports

New Zealand has prohibited the export of a range of goods to Russia and Belarus, including products that are closely connected to strategic Russian industries. The export prohibitions on luxury goods and some oil exploration and oil production products only apply to Russia. Banned exports are listed in the sanctions register.

Outside of the Russia Sanctions Act, goods intended for the Russian and Belarus military, security and police sectors are **banned from export**. [Export Controls \(Export Prohibition to Specified Places\) Notice 2022 \(No 2\) - 2022-go899 - New Zealand Gazette \(external link\)](#). New Zealand also maintains a comprehensive export control scheme for the export of other [controlled goods](#) to Russia and Belarus.

Imports

There is a 35% tariff on all imports of Russian origin. This does not include low value goods of less than NZ\$1,000. In 2019 and 2020 goods of less than NZ\$1,000 made up less than 0.02% of total imports (by value) from Russia.

New Zealand has prohibited the import of
 gold of Russian origin;
 oil, gas and coal of Russian origin;
 luxury goods of Russian origin

Who must comply with the sanctions?

- All New Zealanders no matter where they are in the world.
- All individuals in New Zealand (including those ordinarily resident in New Zealand).
- All businesses and organisations (entities) operating in New Zealand.

Regulatory Approach (agreed by the cross-agency Tasking & Coordination Group.

- The regulatory system has been designed using the existing regulatory systems that are in place to manage illegal activity to the extent that they apply to sanctions (based on other applicable legislation and the existing policies, procedures and systems of agencies) and is considered fit for purpose based on the low likelihood of a sanctions breach occurring. This likelihood is based on New Zealand's limited and shrinking trading relationship with Russia and Belarus. This approach minimised the cost that would have been incurred if a bespoke system had been required.
- s6(a)

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	<ul style="list-style-type: none"> • s6(c) <p>MFAT has established a NZ Sanctions Office which will be in place by 1 April 2023 (transitioned from the current Russia Sanctions Taskforce. The new unit will be responsible for Russia Sanctions and UN Sanctions.</p>
<p>Objectives</p>	<p>The objective of this engagement is to review the Russia Sanctions regulatory framework (including related policies, processes, systems and controls) and comment on whether the framework has been effectively designed and implemented in accordance with the legislation. The review will also provide recommendations for improvements to systems, policies or processes that may be relevant in the lead up to the 2024 review of the Russia Sanctions Act.</p> <p>Regulatory Design adequacy:</p> <p>This will include considering the following design aspects:</p> <p><u>Legislative mandate and application</u></p> <ul style="list-style-type: none"> • The design of (the Ministry’s) Russia Sanctions regulatory system in the context of the Russia Sanctions Act 2022 and Regulations and the extent to which the system design is congruent with the intent of the legislation <p><u>Framework, policies, processes</u></p> <ul style="list-style-type: none"> • The formal and documented policies and processes upon which the Russia Sanctions regulatory regimes operates (multi-agency and MFAT specific but excluding other agencies’ internal policies and processes) including development of new sanctions; exemptions, revocations or amendments to designations; potential breaches; business enquiries; and whether the processes are of a quality that enables complete, reliable and consistent implementation where agency roles and responsibilities are clear. • The design of the multi-agency coordination and governance mechanism (currently titled Tasking & Coordination Group) and the extent to which this contributes effectively to stewardship of the Act and Regulations and effective implementation of the regime. • The extent to which learnings has resulted in amendments to the regulations to make them more fit for purpose and effective. <p><u>Analysis and assessment</u></p> <ul style="list-style-type: none"> • The analysis and assessment process and safeguards, for sanctions, potential breaches and exemptions result, or will result in consistency of decision-making (or advice to decision-makers). <p><u>Information dependencies</u></p> <ul style="list-style-type: none"> • The extent to which the information that forms the basis of

	<p>designation decisions would satisfy judicial scrutiny.</p> <ul style="list-style-type: none"> The method by which the Ministry captures and builds on the existing body of knowledge so that decisions on the development of new sanctions, response to potential breaches and business enquiries, and response to applications (such as exemptions) is approached with consistency and decisions align to the intent of the Act (whether by Ministers or officials). <p><u>Decisions, Escalation and exception management</u></p> <ul style="list-style-type: none"> Steps taken to identify, escalate and internally resolve exceptions to the basis upon which Russia Sanctions operate and decisions are taken Peer or independent review for decisions and deviations <p><u>Recording keeping and documentation</u></p> <ul style="list-style-type: none"> The retention of records evidencing all enquiries or applications from the public, related assessments and decisions. The retention of records relevant to decisions to sanction individuals or entities. The documentation of regulatory system policies and processes and the extent to which this ensures the system endures beyond the current taskforce. <p>Effectiveness of the self-compliance regulatory approach:</p> <p>Once the design aspects of the Ministry’s Russia Sanctions framework have been determined and reviewed for design adequacy, this engagement will test the operating effectiveness (i.e. expected versus actual practice testing) across a sample of business enquiries, potential breaches and exemptions.</p> <p>The reviewer may also comment on the extent to which the guidance and information material is adequate given the nature and breadth of the prohibitions.</p> <p>Lessons:</p> <p>During the review and through consideration of the Lessons Learned report³ provide comment on lessons that could be usefully applied to a future sanctions regime (that have not already been covered in the Lessons Learned report).</p>
<p>Scope</p>	<p>The Ministry’s Russia Sanctions regulatory framework and its related policies, processes, systems, and controls are in scope for this engagement.</p> <p>The scope of this review is limited to a literature review and interviews with key team members and partner agency representatives.</p>
<p>Scope exclusions</p>	<p>A review of the Russia Sanctions Act 2022 will be undertaken in 2024, likewise the regulations expire in 2025 and will be reviewed by then.</p> <p>Therefore, the scope of this engagement will exclude review of the Act or Regulations, however will provide recommendations on areas for improvement.</p> <p>The regulatory regime relies on <u>existing</u> Government mechanisms for</p>

³ The Russia Sanctions Taskforce is undertaking a lessons review incorporating feedback from other MFAT divisions, other agencies and some private sector stakeholders.

	<p>detecting, deterring and responding to criminal activities. These activities are all undertaken by other agencies (such as Police, Customs, and Immigration NZ). With the exception of MFAT and the multi-agency Tasking and Coordination Group, agencies policies, processes, systems and controls are out of scope for this review.</p>
<p>Risk Considerations</p>	<p>s9(2)(g)(i)</p>
<p>Approach</p>	<p>This engagement will involve:</p> <p><u>Planning</u></p> <ul style="list-style-type: none"> • Meeting with key members of the Russia Sanctions team to understand the framework and its operation in the Ministry • Corroborating this through a review of related documents and records • Reconfirming and agreeing milestones and timelines for this engagement with the Divisional Manager. <p><u>Fieldwork</u></p> <ul style="list-style-type: none"> • Review of the documentation that describes the design and operation of the Russia Sanctions regulatory framework (including related policies, processes, systems, and controls) • Analysing the design effectiveness and adequacy of the Russia Sanctions framework, including its alignment with the legislative framework and highlighting any risks and issues • Testing the effectiveness of the self-compliance model across a sample of business enquiries, exemption applications and potential breaches, and compiling risks and issues and commenting on adequacy of the guidance and information available to regulated entities <p><u>Quality assurance and draft reporting</u></p> <ul style="list-style-type: none"> • The quality of the review will rely on the specialist expertise of the

	<p>reviewer and internal MFAT review of the report.</p> <ul style="list-style-type: none"> Producing a draft report with findings and recommendations and circulating this for management (Russia Sanctions team and AUD) comment. Providing the draft report to DS MLG for sponsor comment. <p><u>Finalisation and communications</u></p> <ul style="list-style-type: none"> Finalising the draft report with the Russia Sanctions team and DS MLG once all comments and feedback are incorporated into the report. 								
Location	This engagement will be performed in Wellington.								
Engagement sponsor	s9(2)(g)(ii)								
Key business contacts	<p>The key business contacts are envisaged to be:</p> <p>s9(2)(g)(ii)</p> <ul style="list-style-type: none"> Tasking & Coordination Group agency leads 								
Engagement Team	s9(2)(g)(ii)								
Engagement milestones	<p>This engagement will be performed in line with the timeframes below. This will depend on Ministry staff and reviewer availability.</p> <table border="1" data-bbox="432 1711 1426 2002"> <thead> <tr> <th data-bbox="432 1711 927 1778">Milestone</th> <th data-bbox="927 1711 1426 1778">Due</th> </tr> </thead> <tbody> <tr> <td data-bbox="432 1778 927 1845">Terms of reference finalised</td> <td data-bbox="927 1778 1426 1845">17 February 2023</td> </tr> <tr> <td data-bbox="432 1845 927 1946">Planning/discovery phase completed</td> <td data-bbox="927 1845 1426 1946">22 February 2023</td> </tr> <tr> <td data-bbox="432 1946 927 2002">Fieldwork completed</td> <td data-bbox="927 1946 1426 2002">3 March 2023</td> </tr> </tbody> </table>	Milestone	Due	Terms of reference finalised	17 February 2023	Planning/discovery phase completed	22 February 2023	Fieldwork completed	3 March 2023
Milestone	Due								
Terms of reference finalised	17 February 2023								
Planning/discovery phase completed	22 February 2023								
Fieldwork completed	3 March 2023								

	Quality assurance and draft reporting completed	10 March 2023
	Finalisation and communications	17 March 2023
Any changes to these timeframes will be agreed with the review sponsor via the Divisional Manager.		

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Annex Two: Stakeholders interviewed

MFAT (including seconded Taskforce members)

s9(2)(g)(ii)

Partner Agencies

s9(2)(g)(ii)

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