



**NEW ZEALAND**  
**FOREIGN AFFAIRS & TRADE**  
Manatū Aorere

JUL 2022

# **Russia Sanctions Act 2022**

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# **Russia Sanctions Regulations 2022**

# **Guidance**



## 1. Introduction

The Russia Sanctions Act 2022 and its Regulations place a range of obligations on New Zealand persons (individuals: citizens, those ordinarily resident, and persons in New Zealand, and entities: businesses and companies carrying on business or registered here). The Regulations prohibit or restrict New Zealand persons engaging in specific activities (for example dealing with particular persons, assets and services) and require New Zealand persons to report suspicious activity.

To ensure you are able to comply you should think about the exposure to sanctions risks your business may encounter during the ordinary course of business and how you could manage those risks. Risks vary from business to business, as will the best ways to mitigate them. You understand your business better than anyone else, so you are best placed to identify the vulnerabilities and risks faced from sanctions and how to develop appropriate strategies to manage and control those risks.

We recognise that assessing the risks faced by your business from sanctions related activity and mitigating those risks will take time and effort, so we have developed this guidance to help you understand some key concepts and suggested best practice. It provides a starting point for understanding your sanctions obligations. This guidance is not mandatory.

*Topics covered in this guidance are:*

1. Introduction
2. What are the Russia Sanctions Act and Regulations?
3. What are sanctions?
4. Who are 'duty holders' under the RSA?
5. How do sanctions apply to my business?
6. When to report suspicious activity
7. What is due diligence?
8. What is beneficial ownership?
9. Exporters and Importers
10. What is 'asset freezing' and 'maintaining value'?

## 2. What are the Russia Sanctions Act and Regulations?

On 12 March 2022, the [Russia Sanctions Act 2022 \(RSA\)](#) came into force in response to Russia's invasion of Ukraine. The RSA establishes a framework to impose and enforce sanctions on persons, assets, and services where appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or other countries threatened by Russia's actions. While the focus of the Act is on Russia, it allows for sanctions to be imposed against any country that may be assisting Russia, including Belarus. Designated persons, ships, and aircraft may also be prohibited from traveling to, entering or remaining in New Zealand.

It is a criminal offence to breach a sanction in the Act. For individuals this is punishable by up to seven years' imprisonment or a fine not exceeding \$100,000. For an entity this is punishable by a fine not exceeding \$1 million.

Regulations may be made under sections 9 and 32 of the RSA. The [Russia Sanctions Regulations 2022](#) (Regulations) set out prohibitions and restrictions as defined by section 6 of the Act. The Regulations detail

the nature and scope of sanctions (for example travel bans, prohibitions on dealing with assets and services, and prohibited exports) and are regularly updated as the sanctions regime matures and responds to the invasion in Ukraine.

Individuals and entities may be “designated” under the Act. This means that sanctions may then be applied to them. You can find all individuals and entities that have been designated under the Act in the [Second Schedule of the Regulations](#) and in the [Sanctions Register](#) on the MFAT website.

The Regulations came into force on 18 March 2022 and have been, and will continue to be, amended as the sanctions regime evolves.

### **3. What are sanctions?**

New Zealand has joined the international community in applying sanctions that intend to limit Russia’s (and any country assisting it) ability to finance and equip the war on Ukraine and influence people with power in Russia to break their support for the invasion.

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

Sanctions are intended to prevent designated individuals and entities from moving assets here, dealing with assets already here, or using our financial system to circumvent sanctions that may be imposed by other countries in the future.

Further information on the specific prohibitions and restrictions under New Zealand’s sanction regime can be found on MFAT’s website: <https://www.mfat.govt.nz/en/countries-and-regions/europe/ukraine/russian-invasion-of-ukraine/sanctions/>

### **4. Who are ‘duty holders’ under the RSA?**

The RSA imposes obligations on "duty holders" - these are defined as reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act) or any other person declared a duty holder by subsequent regulations.

The Regulations have declared a number of people as duty holders. See [Regulation 19](#) for details.

### **5. How do sanctions apply to my business?**

There are three types of obligation imposed on duty holders: freezing obligations, reporting obligations and due diligence/monitoring obligations.

#### **IN BRIEF:**

**Freezing obligations:** if you are a duty holder currently and have a sanctioned asset under your control or you are currently providing services to a sanctioned person, you must cease all activity by either freezing the assets and/or stopping any transactions or services involving the sanctioned entity.

**Reporting obligations:** Under the RSA, duty holders are required to report certain suspicions to the Police in relation to certain assets, services and persons. The list of designated assets, designated services and designated persons are set out in the Regulations and in the Sanctions Register. AML/CFT duty holders report suspicious sanctions activity in the same way as AML/CFT suspicious activity reports via goAML . If you are not a duty holder for AML/CFT purposes report using the process outlined on the Police 105 (Ten-five) website.

#### **Due diligence obligations:**

While duty holders have specific obligations in the RSA, all New Zealand persons who may deal with restricted persons, assets and services need to satisfy themselves that they will not breach the sanctions. This will involve some level of due diligence checks, depending on the type and risk of activity, to ensure the individuals or entities connected with a proposed activity are not subject to relevant sanctions.

For example, you will need to think about sanctions in the context of the ordinary course of your business when:

- You on-board new customers and conduct due diligence- this may **include obtaining and verifying** identity and determining the nature and purpose of the business relationships
- You provide services to existing customers and re-confirm their identity and the nature and purpose of business through ongoing due diligence
- You monitor transactions and suspect that sanctions related activity is occurring
- You export or import a good

It is important to continue to check the Regulations and Sanctions Register as these will be updated regularly.

You should also consider whether you need legal advice before taking further action with the person, asset or service.

### **6. When to report suspicious activity**

Duty holders must report suspicious involvement in a transaction or ownership or control of an asset (either directly or indirectly) by a designated individual or entity to the NZ Police Financial Intelligence Unit (FIU) within 3 business days.

For duty holders who are reporting entities under the AML/CFT Act this can be done through Suspicious Activity Reports (SAR) via the goAML portal.

Others can report via the NZ Police 105 non-emergency phone number/website<sup>1</sup>.

Further information on due diligence is included in later sections of this guidance.

*Suspicion* is objective, not subjective. It occurs where an objective observer would conclude that reasonable grounds (see below) for suspicion were known to the duty holder. The obligation to report arises when you either become aware of the facts constituting the reasonable grounds for suspicion, or by reasonable diligence would have become aware of them<sup>2</sup>. The Police FIU has produced some preliminary guidance on

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<sup>1</sup> <https://www.police.govt.nz/use-105>

<sup>2</sup> This is based on the AML/CFT court ruling Department of Internal Affairs v Ping An Finance (Group) New Zealand [2017] NZHC 2363

Suspicious Activity Reports (SARs) and sanction related risks and red flags. A link is provided for convenience: <https://www.police.govt.nz/about-us/publication/financial-intelligence-unit-fiu-alerts>

*Reasonable grounds* refers to an objective view of what actions would be proportionate and suitable given the risks involved and the obligations imposed by the RSA and its Regulations. For instance, the level of identity verification you undertake on your customer.<sup>3</sup>

*Direct or indirect* covers a number of different methods of control or influence. This can include the use of agents, persons acting on behalf of your customers, directors, nominee directors and shareholders. See Beneficial Ownership section for more details.

## **7. What is due diligence?**

Due diligence is the process that a reasonable business or person should take before entering into a transaction. It may involve conducting an investigation, review or audit to verify particular facts and information.

You are responsible for undertaking the checks necessary to ensure persons or entities you are doing business with are who they say they are and not subject to sanctions. You should check the MFAT produced [Sanctions Register](#), which contains a list of all sanctioned individuals and entities, before undertaking any activity to ensure you are not dealing with a party sanctioned under the Act.

You are responsible for undertaking due diligence to ensure assets or services are not directly or indirectly provided to any sanctioned individual/entity, such as through opaque beneficial ownership structures within complex trusts and companies. Understanding who has beneficial ownership or effective control of a legal entity is a key part of due diligence and efforts should be made to work back through any layers of ownership to determine who the beneficial owner is. See Beneficial Ownership section for more details.

A risk-based approach to due diligence is the process by which an organisation selects the level of due diligence to conduct based on the level of risk posed by the person or business.<sup>4</sup> Because not all business relationships are the same, not all risk is the same. A risk-based approach to customer due diligence includes reviewing and assessing the risk presented by your customers, the services you offer and the nature of transactions and activity involving your business. In higher risk situations enhanced levels of due diligence may be required. You may need to use increased or more sophisticated measures to obtain and verify your customer's details, their beneficial ownership structure, and the details of representatives and other key persons. You may also need to obtain and verify more in-depth information about the source of funds or wealth of your customer or the nature and purpose of the business relationship.

Due diligence needs to be ongoing as sanctions risk is dynamic and new regulations are released regularly. Taking a risk-based approach, the extent of any steps needed to ensure compliance will depend on the level of potential exposure.

Refer to the MFAT Russian Sanctions website page for more information:

<https://www.mfat.govt.nz/en/countries-and-regions/europe/ukraine/russian-invasion-of-ukraine/sanctions/>

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<sup>3</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Enhanced-Customer-Due-Diligence-Guideline/\\$file/enhanced-customer-due-diligence-guideline-september-2020.docx](https://www.dia.govt.nz/diawebsite.nsf/Files/Enhanced-Customer-Due-Diligence-Guideline/$file/enhanced-customer-due-diligence-guideline-september-2020.docx)

<sup>4</sup> This is similar to obligations under the AML/CFT Act.

## 8. What is beneficial ownership?

Understanding who has beneficial ownership or effective control of a customer is a key part of due diligence.

'Beneficial ownership' means the person who has either effective control of a customer or person on whose behalf a transaction is conducted; or owns a prescribed threshold of the customer or person on whose behalf a transaction is conducted.<sup>5</sup> The prescribed threshold in the Regulations is a holding of 50% or more, or a right to exercise or control more than 50% of the governing body or voting power.

'Effective control' is a term that describes the influence that a person has in respect of another person or entity.

In some circumstances, it may be necessary to establish the identity of key persons, such as directors (including deemed or shadow directors), shareholders or senior managers, or anyone with identifiable influence over such persons, to understand who has effective control in respect of the customer, as well as beneficial ownership.

Due to existing AML/CFT obligations, many duty holders (as defined under the RSA) will be familiar with this process and have processes to conduct adequate and effective due diligence. AML/CFT guidance on customer due diligence, enhanced due diligence, beneficial ownership and identity verification may prove useful for all types of duty holder and can found on each AML/CFT supervisor's website. A link to the DIA website is provided for convenience. <https://www.dia.govt.nz/AML-CFT-Financial-Institutions-and-Casinos#CDD>

## 9. Exporters and Importers

If you are intending to import/export a good, you may wish to ask yourself the following questions:

### *Exporters:*

- Am I comfortable that the final recipient is not a sanctioned individual or entity or acting on behalf of one?
- Is this a new client or is it someone I know well? If they are new, why have they come to me now?
- How is this customer intending to pay me?

### *Importers:*

- What is the country of origin of the goods?
- If the country of origin is not Russia, am I comfortable that the goods originate from where it is said they come from?
- How is this customer suggesting I pay them?

### *Services:*

- If you intend to provide services to Russia, or receive services from Russia, you also need to consider the implications of sanctions and ensure you are not dealing with a restricted individual or entity.
- You should ask similar questions of your client or provider as noted for exporters above.

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<sup>5</sup> The prescribed threshold is 50% under the Russia Sanctions Regulations 2022 (Regulation 5).

## 10. What is 'asset freezing' and 'maintaining value'?

The Regulations places obligations on New Zealand persons, including entities captured as reporting entities under the AML/CFT Act, to 'freeze' assets if they discover they are in control or possession of a designated asset. This means if you currently have a designated asset under your control or you are currently providing services to a sanctioned person, you must cease all activity by either freezing the assets and/or stopping any transactions or services involving the sanctioned person.

Part of asset freezing is the need to maintain the value of the asset while it is frozen. Assets may need to be managed or stored for the duration of the sanctions in such a manner as not to reduce their value. This could be over significant time periods and require specialised custodial services and facilities and can be a complicated matter. Seeking suitably qualified legal advice is recommended.

Frozen assets can have many forms and can include:

- Cash, shares, foreign currency, bank accounts, cryptocurrency and virtual assets
- Precious metals, such as bullion, coins
- Art collections, antique furniture
- Vehicles, motorcycles, boats and aircraft
- Real estate, farms, lifestyle blocks
- Animals and stock
- Businesses
- Personal property such as jewellery, furniture and effects

Note: Asset freezes are not the same as asset seizures. There is no ability to seize assets under the RSA.

Further information and FAQs are provided on the [MFAT Sanctions](#) website. If you have other queries, please contact [RussiaSanctions@mfat.govt.nz](mailto:RussiaSanctions@mfat.govt.nz)