



24 March 2022

Minister of Foreign Affairs

For approval by

28 March 2022

Russia Sanctions Designations Process

BRIEFING Decision Submission

PURPOSE To seek agreement to the process for how designations will be made under the Russia Sanctions Act 2022.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	8 April 2022
Deputy Prime Minister	For information by	8 April 2022
Minister Responsible for the GCSB	For information by	8 April 2022
Attorney-General	For information by	8 April 2022
Minister for Trade and Export Growth	For information by	8 April 2022
Minister of Immigration	For information by	8 April 2022
Minister of Defence	For information by	8 April 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Andrea Smith s9(2)(g)(ii)	Deputy Secretary Senior Policy Officer	Russia Sanctions Taskforce Russia Sanctions Taskforce	9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Noted | <input type="checkbox"/> Referred |
| <input type="checkbox"/> Needs amendment | <input type="checkbox"/> Declined | <input type="checkbox"/> Withdrawn |
| <input type="checkbox"/> Overtaken by events | <input type="checkbox"/> See Minister's notes | |

Comments

Russia Sanctions Designations Process

Pito matua – Key points

- Under the Russia Sanctions Act 2022 (the Act), the Minister of Foreign Affairs has the discretion to recommend regulations that both create sanctions and then apply the sanctions to individuals or entities. In order to designate an individual or entity and have sanctions applied to them, the name of the individual or entity (or a specified class of individual/entity to which they belong) must be described in the regulations.
- Section 8 of the Act sets out the threshold that must be met when the Minister is exercising her discretion. The elements of the threshold are set out in **Annex I**.
- It is proposed that the Ministry of Foreign Affairs and Trade will provide an Information Sheet for each individual or entity to be considered by the Minister for designation under the Act. A draft example template for such Information Sheet is attached for your approval as **Annex II**.



Andrea Smith
for Secretary of Foreign Affairs and Trade

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Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|--|----------|
| 1 | Note that the Minister of Foreign Affairs may recommend regulations be made under the Russia Sanctions Act (Act) if she is satisfied that the regulations are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country (Annex I); | Yes / No |
| 2 | Note that individuals and entities may be sanctioned by inclusion in these regulations; | Yes / No |
| 3 | Note that the Ministry of Foreign Affairs and Trade will provide an Information Sheet for each individual or entity to be considered by the Minister for sanctioning under the Act and its regulations; | Yes / No |
| 4 | Approve the draft example template for the Information Sheet, attached as Annex II ; | Yes / No |
| 5 | 9(2)(g)(i) | Yes / No |
| 6 | Agree to publish Information Sheets relating to individuals you decide to sanction on the online sanctions register; | Yes / No |
| 7 | Refer a copy of this submission to Ministers with Power to Act (those designated by Cabinet on 7 March). | Yes / No |

Please refer to updated advice in paper titled: Russia Sanctions Regulations : Designations on Economic Elites

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

Russia Sanctions Designations Process

Pūrongo – Report

1. Under the Russia Sanctions Act 2022 (the Act), the Minister of Foreign Affairs has the discretion to recommend regulations be made that prohibit or restrict: designated persons travelling to, entering, or remaining in New Zealand; dealing with specified assets; or dealing with specified services. The first set of regulations to be made under the Act – the Russia Sanctions Regulations 2022 (the Regulations) - entered into force on 18 March 2022 and includes a list of sanctioned individuals and entities.

Designation of an individual/entity

2. In order to sanction an individual or entity, the name of the individual or entity (or a very specific class of individual/entity to which they belong) must be described in regulations. This can be done by amending the Regulations or by making additional regulations.
3. Section 8 of the Act sets out the threshold that must be met for the Minister of Foreign Affairs to amend the Regulations or recommend further regulations be made. A description of the process is set out in **Annex I**.
4. The threshold set out under section 8 must be met each time the Minister decides to sanction an individual or entity.

The threshold for Ministerial decision making

5. It is the Minister's **discretion** to recommend regulations be made under the Act. Section 8 sets out the threshold for recommending sanctions, of which there are two limbs. Both limbs must be met.
 - * Limb 1 (Sections 8(1) and (2)): Responding to threats to sovereignty or territorial integrity of Ukraine or another country; and
 - * Limb 2 (Section 8(3)): Absence of sufficient United Nations Security Council action.
6. Additional individuals and entities will be added to the Regulations by amending regulations. Each set of amending regulations should be considered in the context of the Regulations as they stand at that point in time.

Limb 1: Sections 8(1) and (2):

7. In order to exercise her discretion, the Minister must be **satisfied** that the regulations are **appropriate** to respond to threats to the sovereignty or territorial integrity of Ukraine or another country. These threats flow from the military invasion of Ukraine by Russia (and other countries and individuals that may be assisting Russia).¹
8. A response is **appropriate** if the Minister considers it **demonstrates New Zealand's condemnation** of the threat. It is for the Minister to determine what is appropriate to demonstrate New Zealand's condemnation and these include responses:
 - * being designed to exert pressure on Russia (or a country that may be assisting Russia), including by interrupting economic relations; or
 - * complementing or reinforcing sanctions by other countries.

¹ The military invasion is defined in the Act as having commenced on 24 February 2022 in relation to Ukraine, but sanctions may relate to military actions in Ukraine or in any other country.

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9. Sanctions designed to exert pressure need not actually exert pressure on Russia; rather it is sufficient for the response to be designed to exert pressure on Russia. Proof of outcome is not required.
10. Responses designed to *interrupt economic relations*² may include placing financial pressure on Russia, stopping financial flows to Russia, and reducing the ability of Russia to fund its military action. Such a response could include sanctioning individuals and entities that are politically influential or commercially strategic to the Russian Government as a way to exert pressure on Russia.
11. The examples of appropriate responses above do not confine the Minister's decision; a response may be appropriate for a reason not listed, but some reasonable justification will need to be advanced that links to the purpose of the Act.

Limb 2: Section 8(3):

12. The Minister must also be satisfied that the **United Nations Security Council is unlikely to act** in response to the threat under Chapter VII of the Charter of the United Nations, **or has acted** (or is likely to act) but that action is, or may be, **insufficient**.
13. To date the Security Council has been unable to act due to Russia's veto power.

Information provided

14. It is proposed that the Ministry will provide an **Information Sheet** for each individual or entity to be considered by the Minister. A draft example template for the Information Sheet is **attached** as Annex II for approval.
15. The Information Sheet will set out relevant information, including:
 - * The full name of the individual/name of the entity;
 - * The title or job description of the individual/entity;
 - * Whether the individual/entity is an 'associate' of another relevant individual/entity;
 - * Whether the individual/entity is listed on other countries' sanctions lists; and
 - * Background information on the individual/entity.
16. It is expected the information will be based on open-source material and may be drawn from multiple sources.
17. Under the Act the Ministry must maintain a **sanctions register** online that lists all current sanctions, including descriptions of any sanctioned individuals and entities. It is proposed that the Information Sheets for those sanctioned are published on the sanctions register. By publishing these sheets, New Zealand is likely to be releasing more information on sanctioned individuals than other countries do under their sanctions regimes. However, release would align with our practice under the Terrorism Suppression Act, where

Please refer to updated advice in paper titled: Russia Sanctions Regulations : Designations on Economic Elites

² This phrase draws from Article 41 of the *United Nations Charter*. Article 41 allows for sanctions imposed by the United Nations to cause the— "...complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

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information on designated individuals is published on the New Zealand Police website. Information Sheets would also be subject to the standard Official Information Act process.

Consultation

18^{9(2)(g)(i)}

19. Individuals and entities have the ability to apply to the Minister to request the Minister recommend the amendment or revocation of regulations or grant an exemption to a sanction. Further advice on these processes will be provided in April and May.

20.^{s9(2)(f)(iv)}

Proactively released by the Ministry of Foreign Affairs and Trade

Threshold for recommending sanctions

The Minister may, at her discretion, recommend regulations (section 8(1) of the Russia Sanctions Act 2022) to further the purpose of the Act.

The purpose of the Act is to enable New Zealand to impose and enforce sanctions in response to military actions by Russia (and other countries or persons who may be assisting Russia).

There are **two limbs** of the threshold and both must be met.

Limb 1

The Minister must be satisfied that regulations are **appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country.**

"Threats to the sovereignty or territorial integrity of Ukraine, or another country" flow from military actions by Russia (and by countries or persons who may be assisting Russia) that began on 24 February 2022 (section 3 of the Act) but may relate to military actions in Ukraine or in any other country.

A response includes sanctions of persons, assets or services under the Act.

Test for "appropriate":

A response is **appropriate** if the Minister considers it demonstrates New Zealand's condemnation of the threat (section 8(2)).

A response is appropriate if it is:

OR
Designed to exert pressure on Russia, or another country (section 8(2)(a) of the Act).

- Seeking to interrupt economic relations is one example of a response that would exert pressure on Russia.

Evidence of pressure actually being exerted is not required.

OR
Complements or reinforces sanctions by other countries.

The Minister can take into account the sanctions implemented by other countries when considering what is appropriate (s8(2)(b) of the Act).

OR
The Minister may decide a response is appropriate for any other reason in keeping with the purpose of the Act that is not listed under section 8(2)(a) and (b)).

And

Limb 2

The Minister must be **satisfied** that the United Nations Security Council is unlikely to act in response, or has acted and the action is or may be insufficient, to the threat [under Chapter VII of the UN Charter] (section 8(3)).

Information provided:

- An **Information Sheet** will be provided by the Ministry in respect of each person or entity proposed for designation under the Act and its Regulations. Please see the proposed **Information Sheet** template attached.
- It is expected the information in the Information Sheet will be **open source** and based on **multiple sources**.
- The proposed individual or entity may be an 'associate' of another designated individual or entity. (Section 10 of the Act; section 5(2) of the Regulations)

Full name/name of entity:

Any alternative names:

Title/description:

Date of birth:

Relevant Associates:

Supporting information:

Information based on the following principles will be supplied for your consideration:

- *Information will be based on **multiple sources**, unless it is clear from the position description alone that the individual/entity meets the threshold in s 8 of the Russia Sanctions Act.*
- *Information is expected to be drawn from **open source** material.*
- *Information will be clearly **referenced**.*

It will be noted if the individual/entity is listed under another country's sanction regime.

Assessment against the threshold in section 8 of the Russia Sanctions Act 2022:

Assessment based on the following will be supplied for your consideration:

There have been threats to the sovereignty or territorial integrity of Ukraine or another country (s8(1)).

The response demonstrates New Zealand's condemnation of the threat and it:

- 1. Is designed to exert pressure on Russia, or another country; **or***
- 2. Complements or reinforces sanctions by other countries; **or***
- 3. Is appropriate for any other reason in keeping with the purpose of the Act (s8(2)).*

The United Nations Security Council has not acted or is unlikely to act in response to the threat (s8(3)).

I recommend/do not recommend inclusion of this individual/entity in regulations made under the Russia Sanctions Act.

MFA Initials:
