



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

SEPT 2022

GUIDANCE NOTE

Russia sanctions and financial transactions

This note is intended to provide guidance for financial transactions involving persons in New Zealand and persons in Russia, in relation to the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022. It 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.

Please be aware that even if your transaction is permitted under the Russia Sanctions Regulations, constraints on payments with Russia may still prevent the completion of transactions.



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

Prohibitions

- Regulation 10(2): Subject to regulation 12, a New Zealand person 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.
- Regulation 11(2): A New Zealand person must not deal with a service that is provided by a sanctioned person, or provided to, or for the benefit of, a sanctioned person.

Permissible activities

- 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.

Exemptions

- Section 13(1): Any person may apply to the Minister, on the basis of humanitarian need or for any other reason, to request – (c) an exemption from a sanction for a particular specified situation, in relation to particular persons, assets, or services; and particular events or dealings in relation to those persons, assets or services.

Definitions

- **“Designated”** refers to an asset, person or service to which a sanction has been applied. “Designated” and “sanctioned” are used interchangeably in this Note.
- **“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, who is or is in a class of persons, that is listed in Schedule 2 of the Regulations.

Designated Russian banks

- New Zealand has designated a number of Russian persons, including individual banks and financial institutions. As of the date of this Guidance Note, New Zealand has designated or sanctioned the following Russian banks:

Name	Date sanctioned
Promsvyazbank (PSB)	18 March 2022

20 April 2022

Alfa-Bank, Bank Otkritie, Bank Rossiya, Black Sea Bank for Development and Reconstruction, Credit Bank of Moscow, Gazprombank, Genbank, Industrial Savings Bank, Novikombank, Russia Agricultural Bank, Russian National Commercial Bank, Sberbank, SMP Bank, Sovcombank, Vnesheconombank, VTB Bank

- Please continue to check MFAT's [website](#) including the Sanctions Register for any updates or changes to the list of sanctioned banks since we published this guidance note, as well as to find the full list of individuals and entities sanctioned by New Zealand. Our [website](#) also contains other information including on due diligence and business FAQs.

Incoming transactions from Russia which involve a sanctioned bank

Regulation 10 prohibits a New Zealand person (a New Zealand individual or entity, including a bank) from dealing with an asset that is owned or controlled by a sanctioned person. Regulation 11 prohibits a New Zealand person dealing with services that are either provided by, to, or for the benefit of, a sanctioned person. 'Dealing' with an asset/service includes both "providing" and "receiving".

New Zealand banks are therefore prohibited from dealing with the assets of the sanctioned banks and dealing with services provided by or to them, or for their benefit. This means that a transfer of money from or to a sanctioned bank to a New Zealand bank is a 'restricted service'¹ and the money involved is a 'restricted asset'.²

A consequence of the sanctioning of Russian banks is that a New Zealand person is not able to receive money from a non-sanctioned Russian transferor (i.e. the payment authoriser) unless:

- The Russian person uses a non-sanctioned Russian bank. Doing so ensures that the recipient New Zealand bank does not breach either of the service or asset dealing prohibitions.

OR

- Regulation 12(3) applies, which allows for receipt of restricted assets.

Regulation 12(3)

Regulation 12(3) allows a New Zealand bank to release funds received from any person in Russia (even if the transaction involves 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 provide goods or services that is later modified to be a payment of funds).

Incoming transactions from a party in Russia must be frozen by the bank if:

¹ Russia Sanctions Regulations 2022, regs 11(2) and 12(8).

² Russia Sanctions Regulations 2022, regs 10(2), 10(3), 10A(1)(b) and 12(8).

- the intended recipient is a sanctioned individual or entity; or
- the bank has a reasonable ground to believe that the incoming funds would result in a sanctioned individual or entity owning/controlling the funds or otherwise be for the benefit of a sanctioned individual or entity.

» In order for New Zealand individuals and businesses to receive payment for contracts executed after the date New Zealand sanctioned Russian banks (for most this is 20 April, but please check our Sanctions Register) and comply with the Russia Sanctions Regulations, a non-sanctioned bank must be used. Even where a non-sanctioned bank is used, individuals and businesses should be aware that there may be other constraints on completing international payments between Russia and New Zealand. You are encouraged to speak to your bank in advance of entering into any new/upcoming contracts or undertaking transactions.

Where an international payment has been frozen under regulation 10 or 11, and regulation 12(3) does not apply, the Act allows persons to apply for an exemption. There is no guarantee the exemption will be granted. It is also possible that even where an exemption is granted, the payment may still not be possible because of constraints on transactions that involve Russia. See MFAT's [website](#) for more information about this process.

EXAMPLE 1

Individual A in New Zealand receives a Russian pension. The Russian bank processing the pension payment was sanctioned by New Zealand on 20 April 2022. 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/they is/are legally entitled to the arrangement before 20 April 2022 [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 2022 and is owed payment 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 same time. Following imposition of the tariff increase by New Zealand, Company X wants to cancel the order and receive 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. However, company X can seek an exemption (see MFAT's [website](#) for more information) to receive the funds.

Outgoing transactions to Russia which involve a sanctioned bank

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 or entity 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 Russian sanctioned person is a question of fact in each case.

» In order for individuals and businesses to comply with the Russia Sanctions Regulations, a non-sanctioned bank must be used. Even where a non-sanctioned bank is used, individuals and businesses should be aware that there may be other constraints on completing international payments between Russia and New Zealand, and you are encouraged to speak to your bank in advance of entering into any new/upcoming contracts or undertaking transactions.

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

All New Zealanders, both inside and outside of New Zealand, are required to comply with the sanctions set out in the Regulations. Individuals in New Zealand (and those ordinarily resident in New Zealand) and entities operating in New Zealand are also required to comply.

We advise New Zealand financial institutions 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, financial institutions 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. Our [website](#) contains additional guidance material on due diligence.

Duty holders are not required to report transactions that are permitted under regulation 12(3).³ Duty holders must continue to report transactions that do not meet the requirements of regulation 12(3), in accordance with section 15.

New Zealand persons are permitted to deal with restricted services, if they relate to dealings with restricted assets that are already permitted under the regulation 12 exceptions.

Where the payment value date is before the date the Russian bank was sanctioned, New Zealand banks are permitted to facilitate a transaction if the exceptions in regulation 12 apply. We acknowledge these types of cases are decreasing over time. If you have any specific questions, please get in touch with: RussiaSanctions@mfat.govt.nz.

For any banking disputes or complaints: See the Banking Ombudsman's [website](#).

If you have any other queries, please do not hesitate to contact: RussiaSanctions@mfat.govt.nz.

³ Russia Sanctions Regulations 2022, reg 4(2). This was included through Russia Sanctions Amendment Regulations (No 7) 2022.