NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

REPORT OF THE STATUTORY REVIEW OF THE RUSSIA SANCTIONS ACT 2022

Findings from the statutory review of the operation of the Russia Sanctions Act 2022

June 2025

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PART ONE – INTRODUCTION

1 EXECUTIVE SUMMARY

The Minister of Foreign Affairs (the **Minister**) has a statutory obligation to review the Russia Sanctions Act 2022 (the **RSA**) under section 29 of the RSA. The Minister is required to review the operation and effectiveness of the Act and present a report on the review to the House of Representatives.

The review was undertaken on the Minister's behalf by the Ministry of Foreign Affairs and Trade (**MFAT**). The Terms of Reference for the statutory review can be found at Annex One. The review considers:

- The operation of the RSA since it entered into force on 9 March 2022.
- The effectiveness of the RSA, and whether it is fit for purpose?
- Whether the RSA strikes the appropriate balance between the risk of sanction evasion in New Zealand and the RSA's compliance costs?
- Whether the RSA achieves its statutory purposes?

MFAT's Chief Executive introduced the Regulatory Charter for the RSA as follows:

> *Sanctions are designed to limit Russia's ability to wage war through restricting economic relations and trade, and are most effective when they complement or reinforce sanctions by other countries. Accordingly, our sanctions are aligned with those of like-minded countries including Australia, Japan, the United Kingdom, the European Union, and the United States. While sanctions may not have stopped this illegal war, they are having an impact on Russia and one which will increase over time as their effect is cumulative. While New Zealand has less direct exposure and dealings with Russia than some other countries, by playing our part we are helping to increase pressure on Russia.*

That introduction continues to aptly summarise New Zealand's approach to its Russia sanctions regime. The regime was intended, in concert with measures imposed by other countries, to pressure Russia, and those that support Russia, to change course without the use of armed force, and to ensure that no New Zealander or New Zealand business supports Russia's illegal invasion of Ukraine.

The RSA has stood up well since its enactment and is achieving its purpose. It has enabled the Government to implement measures that align with those imposed by other countries with comparable sanctions regimes, including Australia, Canada, the European Union, Japan, the United Kingdom, and the United States.

The decision to enact framework legislation, with sanctions enacted through regulations, has been successful. The RSA and Russia Sanctions Regulations 2022 (**RSR**) have functioned satisfactorily. They express both New Zealand's condemnation of Russia's illegal invasion at a high level, and New Zealand's concrete efforts to limit Russia's ability to wage war through restricting economic relations and trade between New Zealand and Russia.

Overall, we consider that the RSA and RSR are fit for purpose. The statutory framework strikes an appropriate balance between the risk of sanction evasion and compliance costs.

The review has identified areas in which the RSA and RSR, and MFAT's administration of them, could be improved. Overall, however, we consider that the Russia sanctions regulatory regime does not require any substantive amendment to achieve its statutory purposes.

2 NEW ZEALAND'S SANCTIONS ARRANGEMENTS

2.1 Purpose of sanctions

Sanctions are a tool used by States to seek to influence foreign governments and responsible individuals to modify their behaviour in situations of international concern. The aim of sanctions is to exert political and economic pressure to bring about change.

Sanctions take a variety of forms. The most common in current usage are:

- Travel bans or entry restrictions against specified individuals or groups;
- Trade restrictions including arms embargoes;
- Economic sanctions such as the freezing of assets and restrictions on the transfer of funds; and
- Diplomatic sanctions such as the expulsion or recall of diplomats, and suspension of aid, treaties, cooperation or official visits.

2.2 The United Nations Charter and the United Nations Security Council

The United Nations (**UN**) Charter requires all UN member states to give effect to measures adopted by the UN Security Council (**UNSC**) under Chapter VII of the UN Charter where there is a threat to international peace and security, including sanctions.[1]

New Zealand implements sanctions authorised by the UNSC under the United Nations Act 1946. UNSC sanctions include a broad range of restrictions and prohibitions, for example travel bans and arms embargoes, as well as asset freezes, prohibitions on the entry of ships and aircraft, and prohibitions in relation to specific goods and services.

New Zealand has emphasised the UNSC's responsibility and centrality in upholding collective security, including through its ability to impose sanctions. However, permanent members of the UNSC, including Russia, may veto UNSC action, including in relation to sanctions that may be imposed on them or on other States.

In the absence of sanctions authorised by the UNSC, or specific enabling domestic legislation, New Zealand is only able to impose a limited range of sanctions and sanction-type measures within existing policy and legal frameworks. These include travel bans, goods import and export controls based on the public interest, some types of restrictions on investment, disinvestment by government entities, and diplomatic sanctions (which may include suspension of cooperation, suspension of international treaties, recalling ambassadors and ending diplomatic relations).[2]

[1] Charter of the United Nations, Articles 41 and 48.

[2] Autonomous sanctions were first considered by Cabinet in 2012. The Autonomous Sanctions Bill was introduced to Parliament in May 2017, but it had not had its first reading before the House rose for the 2017 General Election. That Bill would have enabled New Zealand to enact sanctions in the absence of an explicit UNSC mandate. (See Autonomous Sanctions - 10 May 2017 - Regulatory Impact Statement - Ministry of Foreign Affairs and Trade (treasury.govt.nz)).

2.3 The enactment of the Russia Sanctions Act 2022

Russia's permanent membership of the UNSC and veto power meant that UN sanctions were not imposed following Russia's full-scale invasion of Ukraine on 24 February 2022.

New Zealand does not have a general autonomous sanctions regime. It was therefore necessary to pass standalone legislation to impose sanctions independent of a UNSC resolution.

The New Zealand Parliament unanimously passed the RSA on 9 March 2022, following Russia's 24 February 2022 invasion. The RSA gives the Minister the ability to impose sanctions in response to threats to the sovereignty or territorial integrity of Ukraine or another country. The RSA drew on the framework of the Autonomous Sanctions Bill introduced to Parliament in 2017 but not enacted.

New Zealand's Russia sanction regime consists of legislation and regulations that apply unilateral sanctions against Russia (or, in specific circumstances, third parties). This includes the:

- Russia Sanctions Act 2022
- Russia Sanctions Regulations 2022
- Immigration Act 2009
- Customs and Excise Act 2018

3 FEATURES OF NEW ZEALAND'S RUSSIA SANCTIONS REGIME

3.1 The objectives of New Zealand's Russia sanctions regime

The objectives of New Zealand's Russia sanctions regime are to:

- Impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia) to demonstrate New Zealand's condemnation,
- Reduce the risk that New Zealand individuals and businesses may breach sanctions or be used to evade sanctions,
- Ensure New Zealand is not perceived as a soft route to evade sanctions imposed by other countries,
- Ensure any non-compliance, breaches or evasions are dealt with swiftly and effectively by making best use of New Zealand's existing regulatory and enforcement frameworks,
- Manage, as appropriate, disproportionate impacts on New Zealand individuals and businesses.

New Zealand's Russia sanctions regime places various obligations on New Zealanders by prohibiting or restricting specific activities. They also require New Zealanders to report any suspicious activity.

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

3.2 Relevance of international partners' Russia sanctions regimes

New Zealand's Russia sanctions are intended to complement and reinforce sanctions by other countries (as provided for in section 8 of the RSA). New Zealand's sanctions are aligned with those of like-minded countries from the Indo-Pacific, Europe, and North America, including Australia, Canada, the European Union, Japan, the United Kingdom, and the United States.

New Zealand's Russia sanctions therefore take into account partners' sanctions, as well as the types of sanctions measures adopted by the UNSC and implemented in New Zealand under the United Nations Act 1946. A range of partners' autonomous sanctions regimes are considered when regulations are adopted.

3.3 The Russia Sanctions Act and the Russia Sanctions Regulations framework

The purpose of the 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. The RSA empowers the making of 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.

The RSA sets out a threshold for recommending sanctions, and provides that a response is appropriate if (amongst other things):

- It demonstrates New Zealand's condemnation of the threat,
- 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.

The RSA provides for the making of regulations and designation notices. The RSA further provides that 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), and in relation to specified dealing with designated assets and designated services.

The RSA provides that any person may apply to the Minister, on humanitarian or other grounds, for amendment or revocation of a regulation or designation, or exemption from a sanction for a particular specified situation.

Reporting entities under the Anti Money Laundering and Countering Financing of Terrorism Act 2009 (**AMLCFT**) (also defined as duty holders under the RSA) are required to report any suspicions (of a breach or potential breach of sanctions) to the Commissioner of Police (the Commissioner). The Commissioner must share the information with MFAT and may share it with other government agencies, for the purposes of the RSA.

Part 3 of the RSA contains enforcement provisions, which include civil (with provision for enforceable undertakings and injunctions) and criminal. The provisions of the Customs and Excise Act 2018 (**CEA**) relating to prohibition of exports and imports apply for designated assets.

Part 4 of the RSA contains provisions about the review of the RSA and miscellaneous provisions.

The 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). Sanctions can apply to primary sanctioned persons (listed by name) and classes of sanctioned persons (including the associates and relatives of primary sanctioned persons).

Designation notices (made by the Secretary of Foreign Affairs and Trade) provide further details on persons, assets or services already sanctioned.

Sanctions introduced by regulation were to have expired on 17 March 2025. However, prior to expiry they were extended to remain in force until 17 March 2028.

4 THE OPERATION OF THE RUSSIA SANCTIONS ACT

4.1 How sanctions are prepared under the Russia Sanctions Act

MFAT prepares sanctions under the RSA in batches (known as "tranches"). Officials identify possible sanctions measures through research activities and following their regular engagement with international partners about sanctions developments.

Having identified the subjects of a new tranche of sanctions, MFAT makes recommendations to the Minister for individuals, entities, assets, or services to be sanctioned. The process for introducing regulations under the RSA involves:

- Cabinet agreeing categories of sanction.
- The Minister making decisions on MFAT recommendations for individuals, entities, assets or services to be sanctioned within each of the agreed categories.
- MFAT preparing advice to the Minister recommending sanctions, supported by information sheets for each recommendation in relation to individuals and entities.
- MFAT supporting the Parliamentary Counsel Office in the drafting and gazetting (with a foreshortened notice period) of the regulations.

4.2 Types of sanctions

The RSA and RSR provide for seven types of prohibitions:

Travel bans	Designated individuals are prohibited from travelling to, or transiting through, New Zealand.
Transport bans	All Russian and Belarussian military and government owned or controlled aircraft and ships are banned from New Zealand airspace and ports. Aircraft and ships owned, operated, or chartered by sanctioned individuals and entities 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 RSR). 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.
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.
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 certain luxury goods, and some oil exploration and oil production products only apply to Russia. Banned exports are listed in the RSR and sanctions register. 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 is not normally applied to goods in low value consignments of less than NZ$1,000. New Zealand has prohibited the import of: Russian-origin gold, oil, gas and coal, as well as certain luxury goods of Russian origin.

As of 1 June 2025, MFAT has issued 30 tranches of sanctions. There are 1,317 named individuals and 472 entities subject to sanctions under the RSA.

Sanctions have been applied to: President Putin; 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. Sanctions have also been applied to the Russian Armed Forces, Russia's military industrial complex, key state-owned entities providing export revenue to Russia, key banks and financial entities, and to entities or individuals in Belarus, DPRK, and Iran.

4.3 Applications for exemptions

As of April 2025, a total of 35 requests have been made under the RSA to be exempted from sanctions. Of these, 14 exemptions have been granted.

4.4 Applications for delisting

As of April 2025, two applications have been made under the RSA for revocation of sanctions. One has been granted, and the other is under consideration.

5 IMPACT OF NEW ZEALAND'S RUSSIA SANCTIONS REGIME

The Russia sanctions regime has had a substantial effect on trade between New Zealand and Russia.

So far as exports to Russia are concerned:

- From April to December 2021, New Zealand's exports to Russia totalled NZ$196.8 million.
- For the corresponding period in 2022, after sanctions took effect, exports fell sharply to NZ$39.7 million, an 80% reduction.[3]
- For the year-ending December 2024, New Zealand's exports to Russia totalled NZ$17.68 million.[4]

So far as imports from Russia are concerned:

- New Zealand imported approximately NZ$90 million in goods from Russia during 2021.
- Imports from Russia totalled NZ$4.8 million in April 2022, the month the 35% tariff came into effect.
- By February 2023, monthly imports had fallen to approximately NZ$62,000, a 98.7% decrease from April, and over 99% lower than the average monthly imports in 2021.
- For the year-ending December 2024, New Zealand's imports from Russia totalled NZ$2.24 million.[5]

The Russia sanctions regulatory regime imposes significant costs on individuals and entities. These costs include costs for:

- Duty holders in screening persons and transactions, and in reporting suspicious activity.
- Exporters and importers in finding new clients or suppliers or absorbing the tariff increase.
- New Zealand persons to conduct due diligence on their activities to ensure they are not undertaking a prohibited activity and/or doing business with sanctioned persons.
- Government in relation to developing, implementing and maintaining sanctions, education, compliance and enforcement of the regime, including costs of any litigation.
- New Zealand individuals and businesses that may be impacted by the regime, either through New Zealand's sanctions or over-compliance.

MFAT does not hold information on the scale of those costs, nor about how many individuals or businesses are affected.

While the statistical trade data referred to above is one indicator, it is possible that some costs would have been incurred whether or not unilateral sanctions were imposed due to difficulties in receiving payment for goods and services provided to, or received from, Russia. This may be a consequence of the impact of other countries' sanctions regimes, as well as commercial decisions of service providers to withdraw from the Russian market.

MFAT apprehends, from the nature and extent of exemption requests and from consultations with the regulated community, that the sanctions have had a limited impact on New Zealand individuals and businesses. That said, it is clear that economic connections between New Zealand and Russia have reduced substantially. Further, it

[3] https://www.mfat.govt.nz/en/countries-and-regions/europe/ukraine/russian-invasion-of-ukraine/sanctions#trade
[4] https://statisticsnz.shinyapps.io/trade_dashboard/
[5] https://statisticsnz.shinyapps.io/trade_dashboard/

appears that the overall impact of the Russia sanctions regulatory regime on New Zealand's economy has been limited, which reflects the relatively modest scale of two-way trade with Russia before February 2022.

It is not possible to measure the diplomatic impact of New Zealand's sanctions on Russia. MFAT apprehends that there have been significant reputational benefits to New Zealand arising from the Russia sanctions regulatory regime. These arise from New Zealand's public demonstration of its principled defence of, and support for, the United Nations Charter, international law and the international rules-based system.

New Zealand's actions in implementing a novel sanctions regime were registered and appreciated by a broad range of international partners. The reputational benefits were reflected in invitations extended to New Zealand Ministers and officials in various forums, and in perceptions that New Zealand is a reliable partner, committed to the rules-based international order.

At a time when one of the "big shifts" in the international order is one of "rules to power", and when rules are more contested, New Zealand's implementation of a substantial sanctions regime demonstrated the continued importance that New Zealand places on the UN Charter and international law.

6 GUIDANCE AND OUTREACH

To date, the Ministry has issued 14 regulatory guidance notes. The notes are intended to support New Zealanders in complying with the RSA and RSR. The guidance notes deal with:

1. **Oil Price Cap Implementation**: Provides recommendations for enforcing the G7 Plus oil price cap on Russian crude and petroleum products.
2. **Prohibited Maritime Services**: Details restrictions on services related to the maritime transport of Russian oil.
3. **Asset Freeze Notifications**: Guides on informing customers about asset freezes or blocked transactions.
4. **Banking Transactions**: Offers instructions for financial institutions on handling transactions involving sanctioned persons.
5. **Due Diligence and Evasion Risks**: Highlights the importance of due diligence to prevent sanctions evasion and outlines common red flags.
6. **Duty Holder Reporting**: Explains reporting obligations for entities that suspect dealings with sanctioned persons, assets, or services.
7. **Export Prohibitions on Dual-Use Items**: Clarifies restrictions on exporting items that could have both civilian and military applications.
8. **Permitted Activities and Exemptions**: Details activities allowed under specific exceptions, such as humanitarian efforts or personal use.
9. **Russian Energy Products:** Provides guidance on the importation of Russia origin coal, oil, and gas.
10. **Trade Measures**: Provides information on trade restrictions, including import tariffs and export bans on certain goods.
11. **Information for Exporters**: Letter advising New Zealand exporters on obligations under the Russia Sanctions Act.
12. **Transport Sector Guidance**: Advises on handling sanctioned aircraft and ships within New Zealand's jurisdiction.
13. **AML/CFT Supervisors**: Outlines the responsibilities of Anti-Money Laundering and Countering Financing of Terrorism supervisors under the RS regime.

14. **Sanctions Evasion Red Flags**: Identifies indicators of potential sanctions evasion activities.

The New Zealand Sanctions Unit, within MFAT, undertakes a range of regular outreach and education activities to support compliance with the Russia sanctions regulatory regime. These include tailored engagements and training sessions with duty holders and stakeholders such as banks, insurance providers, and law firms, and presentations at relevant conferences. MFAT also undertakes periodic engagement trips to Auckland during which it convenes sector-specific roundtables.

MFAT's website provides detailed information about the Russia sanctions regime and MFAT maintains an active public-facing sanctions enquiries inbox, which serves as a channel for responding to more technical or specific enquiries. MFAT also maintains a mailing list of self-identified stakeholders, and notifies members of any new sanctions measures, guidelines, exemption decisions and the like.

This range of ongoing engagements is intended to help ensure that stakeholders have access to up-to-date guidance and are supported in interpreting and applying their obligations under the sanction's framework.

7 APPROACH TO ENFORCEMENT

The Russia sanctions regulatory regime was intended to support regulated communities to comply with sanctions on the basis of "informed compliance". The Russia Sanctions Regulatory Charter includes four main pillars:

- Providing easy-to-access information and guidance, and responsive communications that support voluntary self-compliance.
- Monitoring of reporting by duty holders and others to obtain valuable information on how the regime is working, and information-sharing across government and internationally.
- A graduated, risk-based approach to enforcement where the response is proportionate to the nature of the breach, the behaviour involved and the risk to the effectiveness of the regime.
- Continuous improvement, so that lessons learned – for example in relation to compliance, breaches, evasions, outreach, and enquiries – are incorporated swiftly into an evolving system.

MFAT's regulatory approach *"spans the full spectrum of compliance elements"* and is based on *"the core principle that most people and businesses want to comply with their obligations, especially once they are aware of them and know how to comply"*.[6]

This approach is intended to allow for the use of proportionate regulatory tools that respond to a continuum of compliance behaviour. As noted in the Charter, enforcement tools range *"… from education and awareness, reminders and warnings, and civil enforcement action through to criminal prosecution for egregious behaviour or repeat offending."* These tools necessarily differ in response to the level of non-compliance and risk presented. The approach also reflects the fact that this is a maturing regulatory regime, in which effective, dissuasive, and proportionate enforcement is necessary to help continue to incentivise compliance.

Oversight and formal coordination and governance is implemented through a Sanctions Governance Group, which includes MFAT, New Zealand Police, New Zealand Customs, Immigration New Zealand, Reserve Bank,

[6] Russia Sanctions Regulatory Charter 2023, p.19.

Department of Internal Affairs, Financial Markets Authority, Crown Law, and others as required. These agencies meet regularly to help ensure effective implementation of the sanctions regulatory regime.

In addition, MFAT also convenes ad hoc working-level inter-agency groups to facilitate information gathering and sharing, and to consider potential action on particular issues (including in relation to compliance and enforcement and potential impacts on New Zealanders).

Engagement with stakeholders suggests most individuals and businesses are already strongly incentivised to comply, including for ethical and reputational reasons. However, there are likely to be differences in awareness and knowledge of obligations, which means unintentional non-compliance is a risk. Intentional non-compliance also remains a real risk.

8 RELATIONSHIP WITH AML/CMF ACT

The AML/CFT Act and supporting regime covers approximately 7,000 entities across 30 sectors. These entities are required to manage and mitigate the risk that they will be misused for money laundering or terrorist financing. While these entities are not currently obligated to manage and mitigate sanctions risks, these activities are also likely to have a deterrent impact on sanctions breaches.

To support this, the RSA provides a requirement for duty holders already captured as reporting entities under the AML/CFT Act to report to the Commissioner of Police when they suspect that they are in possession of assets or dealing with services, that are subject to a sanction. This facilitates the monitoring and enforcement of any restrictions imposed under the RSA and RSR, as well as identifying areas where duty holders may require additional guidance. As of 1 June, the Financial Intelligence Unit of the New Zealand Police (the FIU) has received 40 such reports. Most reports concerned personal remittances or duty holders disclosing that they held investments in sanctioned entities (which is permitted under the regime).

In addition, under the AML/CFT Act, reporting entities are required to report international fund transactions over $1000 to the FIU. This provides some visibility of suspicious sanctions activity in sectors that are high risk for financial crime.

Further work currently under consideration includes additional surveillance activities that would support detection of sanctions breaches or evasion activity to 1 June that might need to be addressed to improve the effectiveness of the regime, for example, third countries that may be being used as intermediaries.

9 APPROACH TO THIS REVIEW

We have, in undertaking this review:

- Met with individuals and teams within MFAT and other government departments to discuss the design and operation of the Russia sanctions regime.
- Met with representatives of the sanctions community of practice in New Zealand, in person in Auckland and Wellington and online, to discuss the review and receive views.
- Conducted a public consultation process whereby submissions were sought on a range of issues set out in a consultation document.
- Reviewed documents relevant to the Russia Sanctions regime.

The primary focus of the review is to consider the matters set out in the Terms of Reference, namely:

- How has the RSA been operating since it came into force on 9 March 2022?
- How effective is the RSA, and is it fit for purpose?
- Does the RSA strike the appropriate balance between the risk of sanction evasion in New Zealand and the RSA's compliance costs?
- Does the RSA achieve its statutory purposes?

We do not consider this review to be a first principles review. Given the short duration since the time of enactment, we have focused on only making recommended legislative change where it is clear the RSA is not operating as intended or where there is an issue which requires clarification.

9.1 Process for public consultation

Targeted consultation took place between April 2024 – September 2024. It was conducted by approaching relevant officials within MFAT, relevant government agencies, and key stakeholders in the private sector. Feedback from this targeted consultation phase helped inform the broader public consultation process and helped shape the topics and issues included in the public consultation document.

Public consultation was open between 29 October 2024 – 16 December 2024. The public consultation included the terms of reference, a series of questions divided across eight topics, and a response form template. To increase public engagement on the review information about it was shared on MFAT's social media accounts (e.g. X and LinkedIn) and via an email update to the MFAT Russia sanctions stakeholder mailing list, which has over 800 subscribers. The documents were published and accessible on the MFAT website for the duration of the public consultation process.

Sixteen public submissions were received. Generally, submissions were focused on issues which were of particular concern to the submitter, but some submissions provided responses to the range of issues canvassed in the consultation paper.

We are very grateful to all who provided input, advice, and assistance throughout our review. Such assistance helped shape the topics covered by the review and influenced the outcome of recommendations.

PART TWO – KEY FINDINGS

Overall view of the regime

In our view, the New Zealand regime for the imposition of sanctions in response to threats to the sovereignty or territorial integrity of Ukraine has performed well overall. We have not identified any substantial legal or operational flaws in the regime. This is a noteworthy achievement in circumstances where the regime was enacted and operationalised very quickly, and where New Zealand had not administered such a regime before.

The submissions indicate that the Russia sanctions regulatory regime is reasonably well regarded by those individuals and entities that engage with it. We consider that it aligns satisfactorily with the sanctions regimes operated by other comparable countries.

The Russia sanctions regulatory regime does not require any substantive amendment to achieve its statutory purposes.

While the review does not recommend substantive amendments, submitters did provide a range of proposals for improving the regime, some of which have been adopted as recommendations in this report. For the purposes of this summary of key findings, we have divided those proposals into two broad categories: those that may warrant legislative amendment in due course, and those that could be addressed in non-legislative ways.

Recommendations – Institutional arrangements and interaction with other agencies

We make the following recommendations on institutional arrangements and interaction with other agencies:

1. It is not necessary to make any legislative amendments to create a power of supervision for the AML/CFT Supervisors to oversee compliance with the RSA regime, or to create positive obligations on duty holders under the RSA, or to tie the AML/CFT Act and RSA any closer together.
2. It is recommended that the interplay between the section 13 RSA process and schedule 5 of the CEA process be resolved either through a memorandum of understanding between New Zealand Customs and MFAT and/or through legislative amendment.

Recommendations – Clarity around the scope of the RSA

We make the following recommendations concerning the scope of the RSA:

3. The review recommends that guidance on reporting under suspected activity be reviewed and updated as appropriate.
4. The 3-day period for submitting a SAR should be retained.
5. The existing threshold for submitting a SAR should be retained.
6. A dual reporting requirement (to both Police and MFAT) is not necessary and would be unduly burdensome for duty holders. The review recommends that MFAT engage with FIU to consider whether there are ways of improving the handling of SARs within current procedural arrangements.
7. Reporting obligations should not be extended to non-duty holders, and the definition of duty holders should not be widened.

8. The review recommends that a pecuniary penalty that is proportionate be added for failure to report under regulation 11(4).
9. Associates and relatives who are subject to sanctions under the RSA and RSR should by listed by name.
10. The RSA is amended to make clear that designation notices do not have the status of secondary legislation.

Recommendations – Extraterritoriality

We make the following recommendations concerning the extraterritoriality provisions of the RSA:

11. An amendment to include the definition of 'New Zealand person' in the RSA to mirror the definition in the RSR.
12. Guidance or case studies are given which clarify the interplay of New Zealand's legislation with other jurisdictions where relevant.
13. Section 26(1)(a) of the RSA be amended to confirm that a person can be charged for an offence if they are found in New Zealand and have not been extradited.

Recommendations – Investigation and Enforcement

We make the following recommendations concerning investigation and enforcement:

14. That the Regulatory Charter be updated following this review to provide greater information on roles and responsibilities of respective agencies involved in sanctions compliance and that additional guidance be produced on the enforcement of sanction breaches.
15. The RSA be amended to enable MFAT to order any duty holder to produce, or provide access to, records, documents or information which are relevant to analysing or investigating a possible offence under the Act.
16. Section 31 of the RSA be amended to enable MFAT to share relevant information with other agencies monitoring for sanctions compliance where the sharing of the information is consistent with the purpose of the RSA and RSR.

Recommendations – Review and Oversight of Sanctions

We make the following recommendations concerning the review and oversight of sanctions:

17. Section 13 should be amended to expressly enable the Minister to initiate a review of a sanctions decision and grant an exemption or recommend an amendment or revocation, without having received a request.
18. Section 13(1) should be amended to remove 'on the basis of humanitarian need' to clarify the broad circumstances in which an affected person or entity can apply for an exemption, amendment, or revocation.
19. The Act is amended to expressly state, for the avoidance of doubt, that there is no right to natural justice prior to a sanction being imposed.
20. Existing guidance is reviewed and updated to include information on the nature and scope of the section 13 exemption power.

Recommendations – Prohibitions

We make the following recommendations concerning prohibitions:

21. Guidance is reviewed and updated on the implicit duty to freeze under regulations 10 and 11. Such guidance should deal with how to implement and operationalise the duty for varying types of asset classes.
22. Additional guidance be issued on terms and definitions used within the export prohibitions, with particular attention given to definitions.
23. Existing guidance on 'Russian origin' is reviewed in light of feedback from the review and updated for clarity.
24. The RSR should also be amended to exclude goods exported from Russia prior to 1991 from the import prohibition.
25. That the Sanctions Unit monitor data for possible types of sanctions evasion behaviour, and that if gaps are identified, look to strengthen existing prohibitions to capture additional types of behaviours.
26. Regulation 12(7)(c) should be amended to better align with relevant international practice.
27. The regulations be amended to carve out an exception from the export prohibition for medicine and medical equipment.

Recommendations – Definitions and Terminology

We make the following recommendations concerning definitions and terminology:

28. Consideration should be given to publishing additional public guidance on the definitions discussed by submitters in the course of the consultation on this Review.
29. Consideration be given to amend the RSR in order to use the RSA term 'designated', rather than the terms 'sanctioned' and 'designated'.

PART THREE – SUBSTANTIVE MATTERS

The consultation document identified the following topics as a means of structuring consideration of the Russia sanctions regulatory regime:

- Topic 1: General questions about the RSA
- Topic 2: Institutional Arrangements and interaction with other Agencies
- Topic 3: Clarity around the scope of the RSA
- Topic 4: Extraterritoriality
- Topic 5: Investigation and Enforcement
- Topic 6: Review and Oversight of Sanctions
- Topic 7: Prohibitions
- Topic 8: Definitions and Terminology

Each of those topics featured a series of issues and questions.

TOPIC 1: GENERAL QUESTIONS ABOUT THE RUSSIA SANCTIONS ACT

The purpose of the RSA is to enable New Zealand to impose and enforce sanctions in response to military actions[7] by Russia (and by countries or persons who may be assisting Russia). In addition to the purpose of the RSA, the regulatory system has identified some additional objectives and principles that underpin the implementation of the system.[8]

The consultation document posed the following general questions about the operation and effectiveness of the RSA and by extension the RSR, and sought comments or observations in response to the following questions.

1.1 Issue 1

How is the RSA operating and is it achieving its purpose?

Analysis

Submitters provided a range of views on the operation of the RSA. Our assessment is that submitters were generally supportive of the purpose of the RSA and generally satisfied with the manner in which it is being administered.

One submitter expressed support for the regime in principle but raised concerns about the ambiguity created by grounding it in an AML-based framework. One other noted minimal engagement from MFAT with duty holders, affecting compliance confidence. Another submitted that the current framework does not strike the right balance between enforcement objectives and compliance costs, and suggested legislative refinement.

One submitter stated that the RSA has overreached its stated purpose, resulting in sanctions being applied to New Zealanders with historic associations to sanctioned individuals despite no active connection to Russia's military actions, and criticised banks for their interpretation and application of the RSA. Another stated that sanctions have had no measurable effect on high-net worth individuals, risked being imposed based on hearsay or speculation, and should be targeted only on those who are closely connected to Russian military activity.

Several submitters expressed concern that the RSA is being applied beyond its intended scope, and should be recalibrated to better distinguish between genuine connections to Russian military activity and incidental or passive links. There was also concern that the implementation of the regime had created unnecessary economic and reputational harm.

Overall, we found that the Russia sanctions regime is operating satisfactorily. That is on the basis that:

- The regime has functioned relatively smoothly for some 3 years, with the Ministry routinely issuing tranches of sanctions, and dealing with applications for exemptions and for de-listing.
- Previous reviews have not identified any major shortcomings in the regime.[9]

[7] The military actions began on 24 February 2022 in relation to Ukraine, but the sanctions may relate to military actions in Ukraine or in any other country.

[8] Russia Sanctions Regulatory Charter, page 12.

[9] See Annex 3.

- The regime has not yet been litigated in the New Zealand courts and has not been the subject of significant public criticism.
- The regime appears, in general and with some exceptions, to have maintained the support of stakeholders, including the public and regulated communities.

1.2 Issue 2

Are there any areas of risk that the RSA does not appropriately deal with?

Analysis

There were a range of responses on this issue. One submitter raised concerns about the unintended consequences of the RSA's implementation, in particular regarding the role of banks in derisking. Another expressed concern about the risk of sanctions evasion, and how the RSA interfaces with the AML/CMF regime, while another sought greater transparency on government monitoring and enforcement trends. Other submissions dealt with whether the current regime adequately manages risk and enforcement, with several highlighting implementation issues rather than flaws in the legislative framework itself.

Submitters also indicated that the regime is largely effective, while also calling for greater regulatory precision in certain areas.

We were unable to identify significant areas of risk that the RSA's provisions do not appropriately deal with. That said, and as stated elsewhere in this report, we did identify areas for improvement and/or additional guidance.

1.3 Issue 3

What is working in respect of the RSA and what is not?

Analysis

Submitters generally reiterated criticisms of the implementation of the RSA, including 'over-enforcement', in particular by the financial sector. Equally, submitters expressed support for MFAT's role and the published guidance, and stated that the regime is coherent and proportionate.

Submitters called for clearer definitions, improved inter-agency coordination, and a recalibration of compliance expectations to ensure the regime remains targeted, proportionate, and aligned with its original purpose.

1.4 Issue 4

Are there areas that are particularly challenging to comply with?

Analysis

Submissions dealt with the need for a formal, transparent delisting mechanism, clearer guidance particularly regarding "associates", and improved alignment with international screening systems to reduce compliance burdens and enhance procedural fairness.

1.5 Issue 5

What could we do to improve the operation of the RSA?

Analysis

Submissions again dealt with the need for a formal, transparent delisting mechanism, and provided recommendations to improve legal clarity and administrative functionality. These included publishing regular formal guidance, aligning reporting obligations under the RSA and AML/CFT regimes, and simplifying the definition and identification of "associates." Some technical amendments were proposed, including expanding the scope of regulation 12, clarifying roles of agencies, improving SAR handling protocols, and delegating certain exemption functions to MFAT.

1.6 Issue 6

Would the RSA benefit from additional statutory objectives or purpose? If so, what would they be?

Analysis

There were a number of submissions about broadening the scope of the RSA into an autonomous sanctions regime of general application. Submitters generally supported the current regime's purpose while encouraging future consideration of a broader autonomous sanctions framework. As noted in the terms of reference, this review is focused on the RSA and not a broader autonomous sanctions framework.

TOPIC 2: INSTITUTIONAL ARRANGEMENTS AND INTERACTION WITH OTHER AGENCIES

When establishing the Russia Sanctions regulatory regime, a key factor in shaping the regulatory regime was an intent to utilise existing levers when trying to regulate sanctioned behaviour. This was to enable the swift establishment of a regime given the pressing need, while also ensuring an effective and proportionate framework for New Zealand's response .

2.1 Interaction between the AML/CFT Act and the RSA

One of the levers relied on was the AML/CFT Act 2009, namely the established AML/CFT reporting mechanism of SAR reporting and also using the definition of reporting entities under the AML/CFT Act 2009 known as duty holders under the RSA. Further, MFAT guidance for duty holders notes that they may find it useful to leverage the customer due diligence, monitoring and reporting policies, procedures and controls they may have in place to comply with the AML/CFT Act to assist in complying with the RSA.

Questions 7-12 of the consultation document focused on the relationship between the two Acts and picks up on some of the recommendations from the Ministry of Justice's AML/CFT Act statutory review.

The questions in the consultation document sought to understand if the regulated community would prefer a greater role for AML/CFT supervisors to monitor for compliance with the RSA as well as AML/CFT given there is a cross over in respect of the due diligence requirements.

2.1.1 Issue 7

Is the relationship between two regimes sufficiently clear?

Analysis

Overall submitters did not want to see amendments to the RSA to make the relationship with the AML/CFT Act any stronger. It was noted by some that while there is a convergence in the activity of sanctions and financial crime, key duty holders viewed sanctions and financial crime as distinct with sanctions being a foreign policy tool and rules based, whereas financial crime is risk based. Some industry bodies argued that the regimes should be completely distinct with no overlap in terms of the reporting tools and in respect of the definition of duty holder/ reporting entity. It was argued that by using the definition of duty holder the RSA was potentially constrained in its focus by the AML/CFT Act definition. It was argued that separating the regimes completely would provide more freedom to develop the definition of duty holder under the RSA.

Recommendation

While there was some divergence of views, it is clear that submitters do not seek any greater connection between the two regimes. While suggestions to separate them completely are understandable, such an approach is at odds with the regulatory approach of utilising existing legislative levers to meet the regulatory objectives of the regime in a cost effective, proportionate, and effective way.

No recommendation is made to separate the sanctions regime entirely from the AML/CFT Act.

2.1.2 Issue 8

Should the AML/CFT supervisors, have an express statutory role to help ensure duty holders/reporting entities comply with their sanction's obligations?

Analysis

While one submitter saw merit in AML/CFT supervisors having an express role in supervising for compliance with the RSA, overall submitters were against this noting the distinct focus of the AML/CFT Act from the RSA. Factors weighing against any change again reflect the view that sanctions are a foreign policy tool to support geostrategic priorities and security requirements which is distinct from the money laundering and terrorism financing focus of the AML/CFT regime. It was also noted that there would be increased compliance costs, complications, and operational burdens if AML/CFT supervisors reviewed compliance with the RSA.

Submitters noted that in their view MFAT was better equipped to monitor for compliance with the RSA, and/or that a specialist supervisor for sanction compliance be established.

Recommendation

Consistent with related issues, submitters generally were of the view that the regimes should be as distinct as possible and therefore that AML/CFT supervisor(s) should not assume any greater role to monitor compliance with the RSA.

Given the strong views expressed in submissions, without further consideration it is not recommended to amend the RSA to create a statutory duty of supervision, on the part of AML/CFT supervisors, for compliance with the RSA. No change is recommended.

2.1.3 Issue 9

Should AML/CFT supervisors produce more guidance about compliance with the RSA and should there be a statutory obligation to have regard to such guidance?

Analysis

Submitters all agreed that more guidance to help ensure compliance with the RSA would be helpful with suggestions of more guidance on what appropriate sanctions compliance programmes should include and working examples of how to satisfy one's obligations. An additional suggestion that came through was for guidance to be targeted at sectors with less familiarity of their compliance obligations under the RSA.

While submissions were supportive of more guidance, overall submitters were in favour of the guidance being developed by MFAT as opposed to by the AML/CFT supervisors. However, there was a useful suggestion that guidance should be produced by MFAT in conjunction with other relevant agencies and in consultation with industry to gain their expertise and knowledge.

Submissions were not in favour of a statutory requirement to have regard to guidance, noting the importance of differentiating between guidance and legal requirements, and of retaining the ability to have flexibility in approach.

Recommendation

The basis for this question was whether there was opportunity for AML/CFT supervisors in the context of their AML/CFT investigatory work to also supervise for sanction compliance, and to issue guidance to help inform reporting entities regarding what they needed to do to comply with their obligations when their records are inspected. However, submissions on this issue and related issues favour a MFAT and/or new sanctions specific supervisor to oversee compliance rather than the AML/CFT supervisor.

The submissions do make clear the importance of guidance in assisting reporting entities to understand their duties and obligations under the RSA, but also make clear the preference for such guidance to be issued by MFAT.

Feedback from the public consultation also favours there not being a statutory requirement to have regard to the guidance. Some arguments in support noted the desire to avoid the guidance becoming prescriptive and wanting to maintain flexibility. It should be noted that the suggestion of a requirement to have regard to guidance does not equate to the guidance itself having the status of secondary legislation but merely that all reporting entities need to keep up to date and be familiar with the guidance. However, given the feedback, no such proposal is recommended.

Based on the submissions on this issue and related issues no statutory change is recommended.

2.1.4 Issue 10

Beyond undertaking risk assessments, should reporting entities have further obligations to mitigate sanctions evasion? If yes, what?

Analysis

Currently, the RSA contains no positive obligations on duty holders which contrasts with the AML/CFT regulatory regime. Effectively, compliance under the RSA is through duty holders undertaking their own risks assessments based on their own compliance approach. The New Zealand position is similar to the approach in the United States.

In response to the issue of whether the RSA should contain positive obligations, submitters argued against any explicit obligation noting that existing measures were sufficient to manage the risk of sanction evasion. Again, there was a desire to avoid a disproportionate compliance burden on duty holders given the low level of risk.

Recommendation

Based on public feedback, the fact other comparative jurisdictions do not place positive obligations on duty holders, and the adequacy of the current operating environment, we make no recommendations for additional, legislative obligations to manage the risk of sanction evasion .

2.1.5 Issue 11

If AML/CFT supervisors were given a statutory mandate to oversee and provide guidance to RSA reporting entities would that raise compliance costs disproportionality?

Analysis

Submissions on this issue largely mirrored other issues under this topic and were against such a change. They argued strongly in favour of MFAT being the sole regulator considering compliance with the RSR without any additional role for AML/CFT supervisors. Submissions highlighted the view that it was undesirable to have dual supervision from different agencies for compliance with the RSA, noting the administrative burden, the potential for inconsistency in approach and the resource required to ensure reporting entities were meeting more than one set of requirements where relevant.

Recommendation

It is not recommended that the AML/CFT Act or RSA be amended to provide a statutory role of supervision by the AML/CFT supervisors for compliance with the RSA.

2.1.6 Issue 12

Should the RSA prohibit the disclosure of information contained in a Suspicious Activity Report (SAR) similar to the AML/CFT Act?

Analysis

The purpose of reporting is to provide information about dealings with designated persons, assets, and services, and other suspicious activity related to sanctions.

Through informal consultation it became apparent that while both the RSA regime and the AML/CFT regime share SAR reporting, there is an inconsistency in approach around disclosure of reports submitted. Under the AML/CFT there is an explicit prohibition of disclosure of information relating to SARs. Whereas under the RSA, there is no prohibition against disclosing information relating to SARs submitted under section 15 of the RSA. The inconsistency in approach was said by some stakeholders to be exacerbated by the fact that a SAR submitted pursuant to section 15 of the RSA may also require a report under the AML/CFT reporting requirements for potential AML/CFT breaches.

With this context in mind, this issue was written to gain feedback on whether disclosure of information contained in SAR reporting should be prohibited to be consistent with the AML/CFT regime. While some submitters thought it should be to ensure an appropriate safeguard for reporting, the majority of submissions favoured the status quo and were against this approach, noting the different nature of the two regimes. Sanctions are rules based and therefore it is largely a factual question if something meets the threshold for reporting. Being able to disclose the nature of the report to the individual/entity enabled transparency. This in turn, it was argued, was consistent with the right to natural justice. For example, if a banking customer's assets were frozen following a SAR, the customer could be informed of the reason for freezing the assets and have an opportunity to respond. In

contrast, it was argued that the prohibition in the context of AML/CFT made sense so as not to compromise active investigations by police to try and detect criminal activity such as money laundering.

The status quo of no prohibition is also consistent with overseas jurisdictions such as Australia and the US.

Recommendation

Given submissions have not favoured a prohibition on disclosure of information relating to a SAR, no change is recommended.

2.2 Interactions with the Customs and Excise Act 2018

2.2.1 Issues 13-15

MFAT has received applications from small business operators or individuals who have unknowingly imported goods which were of Russian origin. When these situations arise, a 35% tariff is applied to the goods and, in some cases, the New Zealand Customs Service seizes the goods, given that importation of certain Russian goods is prohibited. Currently under the RSA, these importers can make a section 13 application for an exemption from a sanction, and such applications have been received in relation to imported Russian goods. The section 13 process does not have a statutory deadline and its relationship with the schedule 5 process in the CEA (a detailed statutory process for applications to the Chief Executive of Customs to review a seizure of goods) is not clear within either Act.

Issues 13-15 in the public consultation document sought public feedback on whether the lack of guidance and/or statutory direction about the interaction between section 13 of the RSA and schedule 5 of the CEA warrants legislative amendment to clarify matters.

Analysis

No public submissions were received on this issue. However, we are aware that issues can arises in practice: the Sanctions Unit has received applications for exemptions from tariffs and import prohibitions and liaise with Customs to manage respective agency processes. Both the Sanctions Unit and Customs are of the view that a solution should be reached to ensure clarity as to how any section 13 application process interplays with Custom's statutory processes.

Recommendation

It is recommended that the interplay between the section 13 application process and schedule 5 of the CEA be resolved either through a memorandum of understanding between New Zealand Customs and MFAT and/or through legislative amendment.

TOPIC 3: CLARITY AROUND THE SCOPE OF THE RUSSIA SANCTIONS ACT

The consultation document posed questions about various provisions and concepts featured in the RSA:

- The obligation on duty holders to report certain matters to the Commissioner of Police;
- The concept of associates and relatives; and
- Designation notices.

3.1 Duty to Report

The RSA places an obligation on duty holders to report to the Commissioner of Police, as soon as practicable (but no later than 3 days), information about certain assets and services relating to sanctioned activity. Further information on the duty to report can be found here. Reporting entities under the AML/CFT Act and anyone declared to be a duty holder under the RSR are "duty holders" for the purpose of the RSA. The RSR in turn specify duty holders as including people in trade who buy or sell specified goods with a total value of $10,000 or more.

The obligation to report arises if duty holders suspect on reasonable grounds that they are: in possession or immediate control of assets that are designated or owned or controlled – directly or indirectly – by a designated person; and/or to deal with, or are dealing with, designated services or services in relation to a designated person.

In addition to the primary duty to report in section 15 of the RSA, there is an additional duty to report in regulation 11(4) of the RSR that requires a New Zealand person who deals with certain specified services to report it to the Secretary of Foreign Affairs as soon as reasonably practicable (but no later than 3 working days after the dealing has occurred).

The consultation document posed a series of questions about reporting obligations.

3.1.1 Issue 16

Are the circumstances where duty holders have an obligation to report under the RSA clear? If not, how could they be made clearer?

Analysis

Submitters generally asked for additional guidance to clarify reporting obligations under the RSA, particularly in cross-border scenarios, and to so far as possible address conflicts between New Zealand sanctions and the sanctions laws of other jurisdictions.

Recommendation

The review finds that the existing reporting obligations are operating satisfactorily and that existing guidance on reporting is helpful but should be reviewed in light of the feedback received in this review. The review therefore recommends that the Sanctions Unit review relevant guidance and update as appropriate.

3.1.2 Issue 17

Is the timeframe in section 15 of reporting within 3 days of forming reasonable grounds to suspect a sanctions breach an appropriate timeframe? If not, why?

Analysis

On the issue of whether the 3-day period for reporting a suspected sanctions breach is appropriate, submitters broadly supported the existing timeframe, recognising its alignment with established reporting obligations and its functionality within the regime.

Recommendation

The review finds that the 3-day period for reporting a suspected sanctions breach should be retained. No change is recommended.

3.1.3 Issue 18

Is the threshold for duty holders to report where they suspect on reasonable grounds clearly understood within your business?

Analysis

On the issue of whether the threshold for duty holders to report where they suspect on reasonable grounds is clearly understood, there were mixed views from submitters with some considering there to be a good level of understanding, and others calling for additional guidance.

Recommendation

The review finds that the existing threshold for reporting should be retained. No change to the existing threshold for reporting is recommended.

3.1.4 Issue 19

When a report is submitted to the Commissioner of Police using GoAML, should there be a requirement for RSA duty holders to also notify MFAT at the same time?

Analysis

On the issue of whether RSA duty holders should also be required to notify MFAT as well as the Commissioner of Police, submitters uniformly expressed concern about a dual reporting requirement. Instead, some submitters expressed that MFAT should be the sole recipient of reports made under section 15 of the RSA and/ or that the SARs should be shared promptly with MFAT to improve efficiency.

Recommendation

The review does not recommend requiring RSA duty holders to notify MFAT as well as the Commissioner of Police concurrently, as this is not necessary and could be unduly burdensome for duty holders. While feedback supported MFAT being the sole recipient of such reports this does not acknowledge the FIU's expertise in analysing material submitted as part of SAR reporting. Instead, the review recommends that MFAT engage with FIU to consider whether there are ways of improving the handling of SARs within current procedural arrangements.

3.1.5 Issue 20

Is the purpose of SAR reporting for RSA breaches and how that information will be used clear?

Analysis

On the issue of SAR reporting for RSA breaches, submitters generally supported the existing reporting obligations under the RSA. There were calls for clearer guidance on the distinction between breaches and standard compliance activity, as well as improved support for sectors operating under overlapping or shifting regulatory frameworks.

On the issues of whether the purpose of SAR reporting for RSA breaches, and how that information will be used, is sufficiently clear, submitters generally supported the current reporting obligations under the RSA. Again, some questioned the use of the FIU as the primary reporting channel, suggesting MFAT would be more appropriate given the foreign policy context. There were calls for clearer guidance on the distinction between breaches and standard compliance activity, as well as improved support for sectors operating under overlapping or shifting regulatory frameworks.

Recommendation

The review finds that the existing SAR reporting requirements for RSA obligations should be retained. Given the nature of the information contained in SAR reports, the FIU remain the appropriate agency to handle and analyse such information. The FIU have a key role in any enforcement of sanctions breaches. They are also under a statutory obligation to share such information with MFAT. As outlined above, the Sanctions Unit should look at existing guidance and see if it can be improved in light of feedback received in response to this review.

3.1.6 Issue 21

Should the RSA be amended to include a positive obligation for non-duty holders to report if they form a suspicion on reasonable grounds that a sanctions breach has occurred?

Analysis

On the issue of whether the RSA should be amended to include a positive obligation for non-duty holders to report if they form a suspicion on reasonable grounds that a sanctions breach has occurred, there was a range of perspectives. Some submitters supported the introduction of a reporting obligation for non-duty holders, some recommended expanding the definition of duty holders, and others opposed the idea saying that this could

result in an excessive burden for non-duty holders who may have limited knowledge of sanctions and therefore inadvertently not-comply.

Recommendation

The review finds that extending reporting obligations to non-duty holders, or widening the current definition of duty holders, is not necessary and would be burdensome for non-duty holders without a clear need for such a change. No change is recommended.

Further recommendation in relation to regulation 11(4) reporting obligation

As part of the outreach for this review it became apparent that there was an anomaly with regulation 11 (4) of the RSR which creates an obligation to report to the Secretary of Foreign Affairs in certain specified circumstances, but which does not have an express penalty for failure to do so. This appears to be an oversight and the review recommends that a pecuniary penalty that is proportionate be added. A penalty similar to the penalty in section 24 (5) and (6) of the RSA for a failure to report under section 15 is suggested.

3.2 Associates and relatives

The consultation document noted that the RSA framework relies on the concepts of associates and relatives to help avoid sanctions evasion. Some associates and relatives, who are known to be involved in the circumvention of sanctions or who have relevant economic or strategic influence in Russia, have been designated by name and added to New Zealand's sanctions register. Other associates and relatives have been sanctioned as members of a class without their names being added to the register. The RSA provides that the regulations apply to associates and relatives as if they were designated persons themselves.

To identify associates and relatives who are not named in the register, New Zealanders and New Zealand businesses must undertake appropriate due diligence. The consultation document posed a series of questions about the concept of associates and relatives.

3.2.1 Issues 22-24

The consultation paper asked whether the concept of associates be retained as part of the RSA and RSR?

If yes, are the current definitions and guidance on the different types of associates adequate for the identification of the different types of associates? If no, please specify which type of associate creates issues from a compliance perspective and why?

If New Zealand primarily listed associates by name, in what circumstances, if any, would it still be appropriate to maintain a class of persons who are automatically sanctioned?

- E.g. for entities should the associate relationship be maintained to ensure subsidiary companies remain sanctioned and thereby preventing the use of shell companies as a tool for sanctions evasion? If yes in principle, are there any changes you would recommend to help make compliance more straightforward?
- E.g. should the RSA/RSR maintain the use of associates when duty holders are undertaking due diligence and identify an agent is being used by a sanctioned person? If yes, do you have any recommendations on how best to do this?

Analysis

Issues around associates and relatives were raised by the Regulations Review Committee in 2022. The Committee wrote to the then Minister about the wording of section 10(2) of the RSA, and its definition of "associate" as a term that encompasses relatives. The Committee said that the RSA treats relatives as a type of associate, and suggested that there is an inconsistency between the relevant definitions in the RSA and the Regulations. The Committee also considered whether the approach of sanctioning relatives generally, and without reference to any specific relationship of control with a sanctioned person, is appropriate in light of the Human Rights Act 1993.

The Minister replied to the Committee noting that the Government's intention in enabling the application of sanctions to 'associates' of sanctioned persons, is similar to but distinguishable from that which applies sanctions to 'relatives'. The then Minister explained that:

> "... the purpose of sanctioning associates is to ensure persons that, or are considered likely to, act on behalf of a sanctioned person are not able to act in a way that allows the sanctioned person to evade the sanctions. The Regulations provide that a person will be an associate of another if: there is relationship of agency; a person is owned or controlled by a sanctioned person; or if a person is a senior manager of a sanctioned person. The 'associates' definition is aimed at capturing financial or commercial dealings, where one person is found to be acting on behalf of the sanctioned person.
>
> It is considered that there is a high risk of a high-net worth individual placing assets with family members in order to evade sanctions. Accordingly, the primary policy intent of capturing relatives is to ensure sanctioned individuals are not able to hide assets by holding or placing their assets in the names of their immediate family members.
>
> The Government considers it important that sanctions against the two classes of people (associates and relatives) are able to be operationalised separately, in the manner and form as appropriate to these underlying policy objectives. Accordingly, the second interpretation of the provision is the most appropriate."

These issues were considered in subsequent reviews of the RSA. The Smol Review in April 2023 stated that the definition of associates of sanctioned persons needs to be clearer with more guidance. The Post-Implementation Review of the legislation noted that the existing approach "increases systems and compliance costs to identify associates and makes sanctions more difficult to comply with if these names are not able to be clearly identified."

The Post Implementation Review also noted that the existing approach ensures sanctions are as effective as possible "by also capturing associates who may be acting for the benefit of the person or otherwise acting to circumvent sanctions." It went on to state that the approach puts additional pressure on designated individuals, provides some administrative benefits, and also provides some flexibility if associates or business methods change including in response to sanctions."

The 2023 "Lessons Learned" review of the RSA noted that the new provisions increased compliance complexity, and observed that stakeholders recommended listing associates, providing clearer due diligence guidance, or amending regulations.

Overwhelmingly, submitters to this review noted that the RSA's approach to associates makes compliance more difficult, and that the identification of associates is a substantial and real cost. Submitters suggested amending the associate test at regulation 5(2) such that "Person B" can be read as both a singular sanctioned person and multiple sanctioned persons. One submitter recommended, in order to capture corporate and trusts complex structures more easily, the RSA/RSR should adopt regulation 7(4) the UK Russia (Sanctions) (EU Exit) Regulations 2019's ownership and control test.

Submitters commented that the associate concept is challenging to comply with and "requires duty holders to consider customer information, research publicly available data, request further details, and potentially seek advice from MFAT or counsel".

In general, submitters expressed a strong preference for lists of names, rather than an approach that requires additional research or inquiry. They also noted that other jurisdictions use list-based systems to identify sanctioned persons, and made various recommendations about related ownership and control issues.

Recommendation

The review finds that while the policy intention behind the current approach to associates and relatives is valid, and was an appropriate response in the circumstances, the RSA's approach on this issue imposes significant compliance costs on the regulated community. The review does not consider that the administrative convenience of the approach outweighs the uncertainty and compliance costs that arise from not naming the persons who are subject to sanctions.

Further, the RSA's approach to associates and relatives does not align satisfactorily with the approaches of counterpart sanctioning jurisdictions. The review recommends that any associates and relatives who are subject to sanctions be listed by name.

3.3 Designation Notices

The Secretary of Foreign Affairs may give Designation Notices pursuant to section 11 of the RSA. Designation notices provide further details on individuals, entities, assets, or services that have already been sanctioned. These details are also included in the sanctions register. The RSA refers to designation notices as secondary legislation. In practice they are primarily used for clarification purposes only and not to designate or sanction persons themselves.

3.3.1 Issues 25-26

Is the status of designation notices sufficiently clear? Are the designation notices on the MFAT website useful?

Analysis

Submitters broadly supported the continued publication of designation notices and recognised their utility in sanctions compliance. However, some submitters suggested that improvements could be made by ensuring timely updates to MFAT's sanctions register, aligning formats across communication channels, and increasing clarity for duty holders about the legal effect of the notices.

In addition to submissions received, the Regulation Review Committee wrote to the then Minister in March 2022 recommending that the RSA be amended to make clear that designation notices are not secondary legislation:

> "We are concerned that the power in section 11 has been classified as a power to make secondary legislation but the effect of the notices is not legislative. Section 11 is restrained so as to prevent the designation of a person, asset, or service that is inconsistent with the intent and wording of the regulation it is made in relation to. The power, essentially, allows the Secretary to clarify who or what is covered by sanctions regulations for the purpose of improving accessibility and understanding. The interpretation section states that a designated person, asset, or service is so designated because they are described in regulations made under section 9, not under section 11.
>
> We do not understand that section 11 is intended to allow the Secretary to amend the scope or application of any regulation made under section 9. If the intention were to provide further detail so as to change the scope or application of any regulation, we would expect that could be effected by amendment to regulations made under section 9."

Recommendation

The review finds that while designation notices are being deployed appropriately, for clarificatory purposes it would be preferable to amend the RSA to make clear that they do not have the status of secondary legislation.

TOPIC 4: EXTRATERRITORIALITY

Under the legislation there is a general requirement that the following groups must comply with sanctions:

- All individuals in New Zealand regardless of their nationality or resident status.
- All New Zealanders (citizens and those ordinarily resident in New Zealand) no matter where they are in the world.
- All New Zealand businesses and organisations no matter where they are operating in the world.
- All overseas businesses registered in New Zealand in respect of their activities connected to New Zealand.

There is a strong policy basis for extending the RSA's reach outside of New Zealand. The aim of extending the scheme is to ensure that all New Zealanders and New Zealand businesses, wherever they are, do not provide support to Russia's illegal invasion of Ukraine.

4.1 Issue 27

Given the extension of jurisdiction to New Zealanders overseas, and also businesses which may be registered in New Zealand, but which have no connection to New Zealand, the consultation paper asked whether the extraterritorial application of the RSA is appropriate.

Analysis

Submitters supported the current extraterritorial application of the legislation and noted that it was consistent with other countries sanctions legislation. Several submitters recommended expanding the application of extraterritoriality to cover more situations. In our view, extending the scope of extraterritoriality is not appropriate in this context because it would go beyond comparable partner regimes, and it would be a disproportionate expansion of extraterritorial jurisdiction. The current application strikes an appropriate balance between situations where New Zealand has a real interest in exercising jurisdiction (i.e. where there is a New Zealand interest) while at the same time recognising the jurisdiction of other countries.

Recommendation

The review finds that the extraterritorial application of the RSA is appropriate and no change in scope is recommended.

4.2 Issue 28

The consultation paper also asked whether the extraterritorial nature of the RSA, including its application to New Zealanders resident overseas, is stated with sufficient clarity.

Analysis

Most submitters found the extraterritorial scope to be stated with sufficient clarity. One submitter highlighted the absence of a definition for "New Zealand person" in the RSA, noting that it was defined in the RSR. The submitter also recommended that the legislation was amended to introduce a definition to the RSA. The submitter also recommended that either s 4 of the RSA (application of the Act) or the provisions on

extraterritorial application are amended to confirm that the RSA applies to 'New Zealand persons' wherever located.

Recommendation

The review recommends a legislative amendment to include the definition of 'New Zealand person' in the RSA, to mirror the definition in the RSR.

4.3 Issue 29

In the context of extraterritorial application, the consultation paper asked whether the exceptions listed in regulation 12 of the RSR, and the process for the revocation, amendment, or exemption in section 13 of the RSA, are operating adequately and if not, how they could be improved.

Analysis

Submitters did not identify any concerns with regulation 12 or section 13 in relation to extraterritorial application. One submitter under this section suggested the inclusion of a general exception in regulation 12, and the establishment of an individual exemptions or permits system. We note that this is the intention of section 13 (additional comment on the operation on section 13 is provided in section 6 of this review).

Recommendation

See the recommendation relating to section 13.

4.4 Issue 30

Finally, the consultation paper also asked whether there should be a nexus to New Zealand in order for an entity to be regulated (see sections 4 and 26).

Analysis

Submitters supported maintaining a clear nexus to New Zealand, with one submitter noting sections 4 and 26 represent an appropriate nexus to New Zealand. On the whole the legislation is clear about its extraterritorial application, however one submitter, suggested a need for clearer guidance to help businesses navigate jurisdictional conflicts and understand how the legislation applies in cross-border scenarios.

In addition to the general submissions about the extraterritorial application of the RSA. One piece of feedback suggested an amendment to section 26 of the RSA to add a further category for when a person can be charged for offences. This change would be to add that a person could be charged under section 26 (1) (a) if they are found in New Zealand and have not been extradited.

Recommendation

While on the whole the RSA extraterritorial provisions are adequate, we recommend guidance or case studies are given which clarify the interplay of New Zealand's legislation with other jurisdictions where relevant.

Lastly, the review recommends that section 26(1)(a) of the RSA be amended to add that a person can be charged for an offence if they are found in New Zealand and have not been extradited.

TOPIC 5: INVESTIGATION AND ENFORCEMENT

5.1 Issue 31

Are the roles of Police, Customs, the AML/CFT supervisors and MFAT in respect of investigating potential sanction breaches clear?

Analysis

Submissions in response to this issue were mixed. Some held the view that the respective roles of agencies in supervising and enforcing sanction compliance was clear from documents such as the regulatory charter. The charter which can be found on MFAT's website was published in 2023 to help the regulated community understand their responsibilities and to improve understanding of how relevant agencies work systematically together in practice to manage sanctions compliance. While some submitters found the charter helpful, others recommended that further clarity about the role of respective agencies in sanctions compliance being set out in statute would be more helpful, for example around the respective roles of MFAT as opposed to Police in investigating and enforcing sanction breaches.

Recommendation

The review finds that clarity around the respective roles of agencies who detect and monitor for sanctions compliance can be achieved through non statutory changes. The submissions indicated that for some the status quo is clear but for the remainder of submitters clarity around the roles of enforcement agencies and members of the Sanctions Governance Group was sought. In our view, this clarity can be achieved without statutory amendment but through an update of the regulatory charter following this review as suggested in the charter itself to provide greater information on roles and responsibilities and also with additional guidance on particular issues such as enforcement.

5.2 Issue 32

Should MFAT have information gathering powers to assist with investigations in New Zealand and overseas?

Analysis

Currently the RSA provides under section 15(5) that the Police Commissioner must disclose to MFAT any information reported pursuant to a section 15 report. Further, for the purposes of the RSA or RSR, the Commissioner can share with other agencies, including MFAT, any information it compels under section 30(1). In addition, other agencies can share with the Secretary of Foreign Affairs information obtained under specified enactments. However, the current statutory regime does not provide MFAT with the ability to compel access, or necessarily share information with other agencies as part of its regulatory functions unless consistent with the Privacy Act 2022.

Submitters were divided on the issue of whether MFAT should have a power of compulsion under the RSA to access relevant information as part of its regulatory function.

While MFAT does receive SAR reports via Police, it is notable that there is a range of mechanisms by which MFAT as the regulator becomes aware of potential breaches, for example through direct engagement with other agencies and/or duty holders. Currently, there are limitations on MFAT seeking further information to inquire into potential breaches, with only the ability to seek information on a voluntary basis from duty holders or to rely on other agencies to exercise the power of compulsion under their legislation. This limits MFAT's ability to support the enforcement function of Police in respect of Russia sanctions. This contrasts with AML/CFT supervisors who do have powers to require production of or access to relevant information. Further, Australia's Department of Foreign Affairs and Trade, operating a closely comparable regulatory environment for sanctions, has the ability to compel information.

Those submitters who were not in favour of MFAT being empowered to compel access to documents argued that MFAT should focus on regulation rather than enforcement.

Recommendation

We recommend that the RSA be amended to enable MFAT as the regulator to order any duty holder to produce, or provide access to, records, documents or information which are relevant to analysing or investigating a possible offence under the Act. Such a power would complement the Commissioner's powers but will need to be used only where strictly necessary and with appropriate safeguards. Feedback from stakeholders resisted the suggestion of AML supervisors having any investigatory powers for RSA compliance. However, giving MFAT the ability to compel provision of information will provide MFAT with greater ability to monitor for compliance with the RSA/RSR appropriately. If this recommendation is accepted, the power of compulsion will require a penalty for non-compliance.

Further, the review recommends that the RSA is amended to expressly enable MFAT to share relevant information with other agencies monitoring for sanctions compliance where the sharing of such information is consistent with the purpose of the RSA and RSR. This proposed amendment to section 31 will enable the two-way flow of information between MFAT and other agencies relevant to sanctions.

5.3 Issue 33

When it is ambiguous as to whether a SAR relates to a breach of the AML/CFT Act or the RSA would it be appropriate for that information reported under one regime, to be used for the purposes of the other regime?

Analysis

Feedback from duty holders and relevant agencies indicated that there may be cross-over in reporting where a duty holder could submit a SAR report under the AML/CFT Act for example but following further investigation the lead enforcement agency may identify that the report should have been submitted under the RSA. Reporting under the wrong Act has a range of implications, including in relation to the AML/CFT having a prohibition against disclosure, as well as in respect of the applicable investigatory and enforcement powers, which could in turn have implications for any resulting prosecution.

In response to the issue, some submitters favoured having two separate reporting mechanisms rather than the RSA relying on SAR reporting. Alternatively, one submitter, suggested that where it becomes clear that a SAR

should be treated as being submitted under the sanctions regime rather than AML/CFT regime or vice versa that the FIU notify the duty holder as soon as possible of which regime they are considering it under.

Recommendation

The review finds that a separate reporting regime for possible breaches of the RSA is not practicable given the resource implications of setting this up for infrequent SAR reporting under the RSA. Therefore, no changes are recommended.

TOPIC 6: REVIEW AND OVERSIGHT OF SANCTIONS

6.1 Review and oversight of decisions made pursuant to the RSA

Section 13 of the RSA allows people to apply to the Minister for a sanction to be amended or revoked, or to be exempted from a sanction in certain circumstances. This is the only mechanism within the RSA for a sanctions decision to be reviewed. The RSA does not contain any other review or appeal mechanism.

An application must be made to initiate a review under section 13 of the RSA. While there is a general ability for a Minister to review a decision in line with general principles of administrative law there is no explicit statutory power in the RSA for the Minister to reconsider a sanction at the Minister's own initiative.

6.1.1 Issue 34

The consultation paper asked whether section 13 should be amended to make it explicit that the Minister can reconsider sanctions at their own initiative.

Analysis

Submitters generally supported expanding section 13 to include an explicit provision for the Minister to initiate a review. Submitters noted that such a provision would align the RSA with likeminded partners' sanctions regimes. One submitter suggested that the initiation of a 'unilateral review' under an expanded section 13 should be conditioned, and only available if there is a material change to the justification for imposing the sanction. The view of the submitter was that the current arrangement ensures procedural integrity by limiting discretionary reconsideration to instances where an application has been made.

We consider that the RSA should expressly enable the Minister (or the Ministry by delegation from the Minister) to initiate a unilateral review of a sanction measure, without the need for an application to be made. We do not consider it necessary to condition the initiation of a unilateral review in order to retain a wide discretionary power sufficient to address a range of scenarios that might warrant review.

Recommendation

The review recommends that section 13 be amended to expressly enable the Minister to initiate a review of a sanctions decision and grant an exemption or recommend an amendment or revocation, without having received a request.

6.1.2 Issue 35

The paper also asked whether there are other ways in which the section 13 process could be improved.

Analysis

Several submitters recommended that the Ministerial decision-making power in section 13 be delegated to the Ministry in order to streamline the review process, reduce administrative burden, and align with international

practice. Alongside delegation, it was recommended that a clear right to make requests to the Minister was retained if delegation was made to officials.

The Public Service Act 2020 provides for the delegation of Ministerial functions or powers such as the section 13 statutory function. Therefore, we do not consider it necessary to include any additional powers of delegation in the RSA.

It was also recommended by one submitter that "on the basis of humanitarian need or for any other reason" could be removed from section 13(1) because "for any other reason" expands the scope of the provision and renders "on the basis of humanitarian need" unnecessary. Another submitter recommended that section 13(1) should explicitly be expanded beyond "humanitarian need".

Section 13 is the only statutory mechanism in the RSA enabling the granting of relief from sanctions decisions, either through an exemption, amendment, or revocation. Given the potential impact a sanctions decision can have on an individual or business, it is appropriate that section 13(1) and the power to grant an exemption remain broad.

We do not consider it would have been the intent of section 13 to set a high threshold, given that it is the only avenue for statutory relief provided within the RSA.

One further issue that came up for consideration is whether the RSA should make it explicit that prior to sanctioning, an individual has no right to natural justice by being given an opportunity to provide reasons as to why they should not be sanctioned. The policy justification being that a sanction needs to be imposed without notice to avoid the risk of evasion.

Recommendation

Overall, the process under section 13 is adequate. Submissions raised whether there should be an express delegation, to enable the Secretary to make decisions under section 13. The review finds that such an amendment is unnecessary as section 13 functions can be delegated and have been without it being provided for in the RSA itself.

The review recommends that section 13(1) be amended to remove "on the basis of humanitarian need" to clarify the broad circumstances in which an affected person or entity can apply for an exemption, amendment, or revocation.

We also recommend that the Act is amended to expressly state, for the avoidance of doubt, that there is no right to a natural justice process prior to a sanction being imposed. Any prejudice is remedied by the right to make an application for review under section 13. While this amendment is not strictly necessary, we recommend the change for clarity purposes.

6.1.3 Issue 36

The paper asked for any other feedback on applications for amendment, revocation, or exemptions under the RSA.

Analysis

One submitter supported amending section 13 to create a complementary 'permitting regime' under which an application could be made to authorise an ongoing category of conduct that would otherwise be prohibited. This was distinguished from the current exemption model in section 13(1)(c) which was viewed as only permitting conduct in singular specified situations. It was viewed that this position is inconsistent with like-minded partners' regimes.

We do not agree with the submission that section 13(1)(c) limits exemptions to singular specified situations. While the situation must be specified and in relation to identified persons, assets or services, or particular events or dealings related to those persons, assets, or services, it is not limited to one-off or singular situations. A section 13 exemption could be applied on an ongoing basis, and to a category of activities, so long as the relevant situation outlined in an exemption application were described with enough specificity.

We consider that the specificity that would be required under a new 'permitting regime' would be of equal detail to what is required for section 13 in order for the relevant decision-maker to be able to make a decision on the facts.

We also note that the RSR contains a range of exceptions to the sanctions which are applicable as a matter of right, and as such creates a form of permit for categories of ongoing situations that are available to any regulated person to rely on.

Recommendation

While the review finds that the review function largely is helpful and fit for purpose, it notes that additional information on the nature and scope of the section 13 exemption power would be helpful. The review recommends that the Sanctions Unit review and update existing guidance including with more information on the nature and scope of the section 13 exemption power.

6.2 Review and oversight of Duty Holder compliance with the RSA

6.2.1 Issues 37-38

The consultation paper asked whether other oversight bodies (e.g. under the Banking Ombudsman Scheme) should have jurisdiction in respect of RSA-related matters and if yes, how such bodies should best liaise with MFAT and NZ Police, in light of their responsibilities under the RSA.

The paper also asked for any other comments about the interaction between the RSA's regulatory framework and other oversight bodies (including in respect of non-duty holders).

Analysis

The RSA did not establish a separate statutory body to review or oversee the compliance of duty holders with their statutory responsibilities.

Submitters were unanimous in their view that other oversight bodies should not have jurisdiction for RSA-related matters. Submitters were of this view largely because of the complexity of sanctions law and limited expertise and technical background to adequately provide oversight functions.

In addition, submitters noted that existing bodies did not have the mandate to consider RSA-related matters, and one submitter noted under section 19 of the RSA other bodies would be prevented from granting compensation, and so therefore questioned the value of those bodies providing dispute resolution services. Submitters supported oversight remaining with MFAT and New Zealand Police, with some submitters suggesting that a specialised supervisory body could be established as an alternative.

A submission from one oversight body outlined that while they consider complaints about their sectors' compliance with their obligations under statute, contract, or industry best practice, including complaints touching on sanctions, that they do not consider themselves having any role overseeing compliance with the RSA and therefore there is no overlap. The review agrees with this assessment and does not seek to limit the ability of customers to make complaints to relevant oversight bodies.

Recommendation

The review does not consider it necessary to expand the jurisdiction of existing oversight bodies to include RSA-related matters. Nor do we recommend the establishment of an independent oversight body. The current regime is sufficient. No change is recommended.

TOPIC 7: PROHIBITIONS

The RSA places a range of obligations on all New Zealanders by prohibiting or restricting specific activities under the RSR.

7.1 Asset freezes

Regulations 10(2) and (3) implement prohibitions on dealing with assets in relation to sanctioned persons. Regulations 11(2)(a) and (b) implement prohibitions on dealing with services in relation to sanctioned persons. Taken together, these prohibitions effectively implement an asset freeze (i.e. an obligation not to deal). For example, if a duty holder has a sanctioned asset under their control, they must cease all activity by freezing the asset. If a duty holder is currently providing services to a sanctioned individual or entity, they must cease all activity by stopping any services involving the sanctioned individual or entity.

7.1.1 Issue 39-41

The consultation paper asked whether the legislation should contain a more explicit obligation to freeze assets or services, as well as an obligation to do so in circumstances where there are reasonable grounds to suspect prohibited activity. The paper also asked whether there should be a statutory process to specify how to deal with frozen assets.

Analysis

There were mixed responses from submitters to these issues. Some submitters agreed that explicit obligations should be implemented in the legislation and highlighted the benefit of greater clarity, particularly from a compliance perspective, and that this would align with international practice. Others did not support additional restrictions, and one submitter noted that the existing obligations, alongside guidance from MFAT, were sufficiently clear. One submitter did not support an explicit obligation because in their view assets captured by the prohibitions can be of benefit to New Zealanders.

One submitter in support of the additional obligation was of the view that it would be beneficial for duty holders. It was suggested that section 19 could be amended to make it clear that no person is entitled to compensation or any other remedy for good faith and reasonable actions or omissions by a duty holder in pursuance or intended pursuance of its duties under the RSA (including freezing or services). Another submitter also supported the addition of this obligation, but only to apply when a named designated person or an associate is captured on a screening list.

Another submitter did not support the proposal because it had the risk of creating two thresholds, and it was appropriate for sanctions compliance to be governed by an objective standard. A further submitter asserted that an additional standard may be uncertain and difficult for low-risk non-duty holders to implement.

Regarding whether statutory processes were necessary to specify how to deal with frozen assets, submitters largely did not think this was necessary, particularly given the diverse range of assets which my need to be frozen and the difficulty of doing this through statute. Submitters supported further and detailed guidance from MFAT on how to deal with frozen assets.

We do not consider that the legislation should contain a more explicit obligation to freeze assets or services. Nor do we consider that there should be a new, additional, obligation to freeze assets or services in circumstances where there are reasonable grounds to suspect prohibited activity. This would add to the compliance costs of duty holders, and to the complexity of the overall regime. We do not consider that the benefits to be gained from the additional obligations would outweigh the costs.

Our assessment is that the RSA's existing settings are sufficient, and the absence of an explicit duty to freeze is not leading to implementation issues.

Further, we do not consider that additional statutory processes on how to deal with frozen assets and services, either through the current prohibitions or a new explicit prohibition, are warranted. The range of types of assets that might be captured by a duty to freeze are too extensive to have processes prescribed within legislation and detailed guidance on operationalising these duties is likely to be sufficient.

Recommendation

We do not consider that the RSA should be amended to provide for an explicit obligation to freeze assets or services. However, based on the submissions we recommend that existing guidance is reviewed and updated on the implicit duty to freeze under regulations 10 and 11. Such guidance should deal with how to implement and operationalise the duty for varying types of asset classes.

7.2 Prohibited Exports

Regulation 13 prohibits a New Zealand person from exporting specified goods either directly or indirectly, to, or for use in, or for the benefit of Russia [or Belarus]. The inclusion of 'indirectly', 'for use in', and 'for the benefit of' intends to capture activity which may seek to evade the export prohibitions. For example, by exporting goods through a third country i.e. the goods are sold to an entity in a third country and exported there only to be shipped on to Russia.

7.2.1 Issues 42-43

The consultation paper asked whether those terms were sufficiently clear and whether there was any other comment on terms used in the export prohibitions.

Analysis

One submitter found the term 'for the benefit of' clear, while another suggested further guidance on its interpretation regarding ownership thresholds and indirect benefit would be useful. One submitter also noted that the term 'luxury good' in regulation 13 lacked a clear definition and recommended consolidating all definitions into one part of the legislation to improve accessibility and clarity.

One submitter recommended expanding the scope of the export prohibitions to cover the export of dual-use goods and critical minerals to Russia.

Overall, submitters were reasonably satisfied with operation of the legislation as it relates to the export prohibitions. It could be useful to issue additional guidance to ensure consistent interpretation and

understanding of obligations. The suggestion to expand the export prohibitions is outside the scope of this review.

Recommendation

The review recommends that additional guidance be provided on terms used within the export prohibitions, with particular attention given to definitions. We do not recommend that all definitions are consolidated in one part of the legislation because some terms have general application across the RSR, while some terms have specific application to specific regulations or parts.

7.3 Prohibited Imports

Regulation 14A prohibits a person from importing specified goods, either directly or indirectly, of Russian origin into New Zealand. The use of 'indirectly' in the prohibition intends to capture any activity which may seek to evade the import prohibitions. For example, by importing goods of Russian origin from a third country.

7.3.1 Issues 44-46

The consultation paper asked whether the prohibition was sufficiently clear, and in particular the use of the terms 'indirectly' and 'Russian origin'.

Analysis

Submitters generally agreed that the prohibition is sufficiently clear. One submitter supported providing practical examples to help understanding and improve compliance.

Submitters were divided on the clarity of the definition of 'Russian origin'. One submitter found it clear, while others raised concerns about ambiguity in practical application, particularly regarding goods processed outside Russia or composed of mixed origin components. Those submitters suggested that accessible guidance or examples would help clarify when a good is considered of Russian origin.

One submitter agreed that an exception should be introduced for goods imported into New Zealand that were exported from Russia prior to 1991.

Overall few issues were raised with the import prohibitions. While MFAT guidance already exists on 'Russian origin', the feedback from the review suggests it may require updating.

In relation to whether goods exported prior to 1991 should be excluded, the review finds that there is policy justification for implementing such an exclusion. This is because capturing exports made prior to 1991 does not meet the purpose of the RSA, which is to enable New Zealand to impose and enforce sanctions in response to military actions by Russia which began on 24 February 2022 in relation to Ukraine. Exports made prior to 1991 cannot be said to be connected to or support Russia's current ability to conduct military action. We assess 1991 to be an appropriate cut-off point as it reflects the formation of the Russian Federation, following the dissolution of the Soviet Union.

Recommendation

The review recommends that existing guidance on 'Russian origin' is reviewed in light of feedback from the review and be updated for clarity, such as by providing more examples. The review also recommends that RSR should be amended to exclude goods exported from Russia prior to 1991 from the import prohibition.

7.4 HS Codes

The prohibitions on imports and exports in regulation 13 and 14A are implemented through the Harmonised System (HS) Codes. These HS Codes are listed in schedules to the RSR. If the HS Code of a good intended for import and/or export falls within one of the HS Codes listed in the relevant schedules, then it is prohibited for import and/or export.

7.4.1 Issues 47-49

The consultation paper asked whether the current usage of the HS code system for the purposes of the RSA is appropriate and clear, as well as if any HS codes currently used should be reviewed.

Analysis

Submitters found the use of HS codes sufficiently clear, however one submitter noted practical challenges for duty holders in applying due diligence where transactions do not directly involve trade products or designated persons.

As an alternative approach, the consultation paper asked for feedback on using a descriptive list of prohibited goods, similar to the Export Controls Strategic Goods List, instead of HS Codes. Submitters expressed confidence in the use of HS Codes, noting they are sufficiently clear and internationally recognised and did not recommend changing this.

It is clear that the use of HS codes is well understood and a clear and internationally recognised system for implementing import and export prohibitions. While one submitter acknowledged some difficulty for duty holders in certain circumstances, overall, we consider that this would be better addressed through compliance policies and practices rather than require legislative amendment.

Recommendation

Overall, the review finds that the use of HS codes is working well and is understood. No change is recommended.

7.5 Sanctions Evasion

Sanctions evasion is the act of avoiding or circumventing sanctions. It can involve concealing or shielding sanctioned entities and individuals. Sanctions evasion activity can disguise ownership, the origin of assets and funds, or the ultimate destination of export goods. Common evasion methods are to move funds to agents, relatives, or shell companies, or to route business transactions through third countries and new accounts.

To counter sanctions evasion behaviour, the RSA and RSR use a range of terms and concepts to capture behaviour that is often associated with sanctions evasion. For example, by capturing indirect exports, or dealings for the benefit of a sanctioned person. While some of the prohibitions seek to capture behaviour associated with sanctions evasion, there is no explicit prohibition on sanctions evasion itself.

7.5.1 Issue 50-51

The consultation paper asked whether there should be an express prohibition on sanctions evasion, and if so, how such a prohibition would impact compliance.

Analysis

Submitters expressed mixed views on an explicit evasion provision. Some submitters saw it as unnecessary or potentially ineffective in achieving its intended purpose, particularly when balanced with the additional obligations it would place on duty holders. If such an obligation were introduced, submitters asserted that it must be clear on the nature of the obligation that is imposed and that this be balanced with compliance costs. One submitter also noted that it is unlikely such a prohibition would change behaviour.

Some submitters supported an additional obligation and noted it would facilitate combatting sanctions evasion.

There were also mixed views on how this would impact compliance. One submitter stated that it would enhance enforcement without materially impacting compliant duty holders, while another raised concerns about increased compliance burdens, particularly for financial institutions, noting the risk of expanded due diligence requirements.

We do not consider there to be a strong case for introducing an express prohibition on sanctions evasion. If not properly implemented, such a prohibition could have unintended consequences for compliance.

Recommendation

The review does not recommend that an express prohibition on sanctions evasion be enacted. Instead, we recommend the Sanctions Unit monitor data for possible types of sanctions evasion behaviour, and that if gaps are identified, look to strengthen existing prohibitions to capture additional types of behaviours.

7.6 Exceptions from the application of sanctions

Regulation 12 contains exceptions for when dealing with assets and services, ordinarily prohibited by regulations 10, 10A and 11, is permitted. For example, holding a bank account with a sanctioned person, providing legal services in connection with the RSA, or facilitating the normal performance of diplomatic functions or obligations that existed prior to the sanctions.

7.6.1 Issues 52-53

In this context, the consultation paper asked whether regulation 12 was clear to interpret and apply and if the circumstances specified in regulation 12 were appropriate.

Analysis

All submitters who responded to this question agreed that regulation 12 was clear to interpret and apply.

7.6.2 Issue 54

Specifically, and based on feedback to date, the review asked if regulation 12(7)(b) in relation to legal services should be broadened to cover New Zealanders overseas providing legal services in circumstances which are consistent with access to justice, but which are currently not within the exception.

Analysis

Submitters supported broadening this exception to cover additional types of legal service provision. An example given was to allow New Zealanders to accept arbitral appointments or provide legal services in international proceedings involving sanctioned Russian entities. It was highlighted that the current restrictions put New Zealand arbitration practitioners at a disadvantage compared to comparable jurisdictions, where legal and arbitral services are generally exempt. A general exemption to uphold access to justice and avoid unnecessary delays caused by individual exemption applications under section 13 was recommended.

Further, feedback provided to MFAT outside of the consultation process on the regime encouraged broadening the scope of the exception to permit New Zealand lawyers to act for a sanctioned person in a wider range or circumstances. For example, when the legal services relate to the sanction's regime of another likeminded jurisdiction; where the legal services are permitted by the lawyer's jurisdiction of residence; or where the legal services are necessary in the interest of justice.

Recommendation

We consider that the legal services exception should be brought into alignment with comparable jurisdictions many of whom have a broader legal services exception.

However, since the production of the consultation document, this issue has been resolved by MFAT with regulation 12(7)(b) being amended to allow New Zealand lawyers to provide legal services to sanctions persons in relation to, and in anticipation of, litigation proceedings in any jurisdiction.

7.6.3 Issue 55

The consultation paper also asked if there are any other exceptions in regulation 12 which could be improved or clarified.

Analysis

One submitter noted that financial institutions should not have the discretion to decide whether to provide services, if permitted by regulation 12. Another submitter supported amending regulation 12(7)(c) to explicitly allow banks to charge reasonable administrative fees or interest when dealing with restricted assets, aligning with international practice.

The nature of regulation 12 is such that it permits activity which would otherwise be prohibited if there is a policy justification. Regulation 12 does not however compel the regulated community to deal with assets and services otherwise prohibited by the regulations, for example to provide banking services. In that case, financial institutions have the discretion to provide services based on a range of commercial considerations. We do not consider that it would be appropriate for regulation 12 to direct the regulated community to undertake dealings.

We do however consider that regulation 12(7)(c) should better align with international practice, for example to charge reasonable administrative fees or interest when dealing with restricted assets, and as such a comparison with other jurisdictions to support an amendment as proposed in the submissions would be worthwhile.

Recommendation

We recommend that regulation 12(7)(c) is amended to better align with relevant international practice. A full analysis of partners' sanctions regimes should be undertaken to determine the extent of these amendments.

7.6.4 Issues 56-57

Exceptions to export and import prohibitions.

The RSR contain exceptions to the export and import prohibitions. In particular, under regulation 14(1) a New Zealand person may export, directly or indirectly, an asset to, or for use in, or for the benefit of Russia or Belarus if the person does so in good faith for a humanitarian purpose and in doing so is consistent with the purposes of the regulations. Under regulation 14(2) a New Zealand person may export, directly or indirectly, a luxury good to, or for use in, or for the benefit of Russia if the luxury good is a personal effect. Under regulation 14B a New Zealand person may import a luxury good of Russian origin into New Zealand if the luxury good is a personal effect.

The consultation paper asked if there are any issues with the existing exceptions and if other situations should be included in the list of exceptions.

Analysis

One submitter raised concerns regarding the lack of clarity in the application of the regulation 14(1), the humanitarian purposes exemption. The submission noted that there was interpretive uncertainty around the terms "good faith" and "humanitarian purpose", and what it means for an activity to be consistent with the purpose of the regulations. The subjective nature of these concepts may reduce the certainty with which the exemption can be applied.

An example of the uncertainty was in relation to the export of medicines and medical devices and whether for example these would be considered to fall within the regulation 14 exception or require a specific exemption. The submitter noted that comparable jurisdictions such as the US and EU explicitly relied on exceptions for the export of medicines and medical devices to Russia and favoured such an approach in New Zealand given regulation 14 may not cover commercial activity.

One submitter suggested the addition of a "benefit to New Zealand" exception but did not provide detailed commentary on how that would be implemented.

Recommendation

Overall, the export and import prohibitions are working well and are fit for purpose. However, we have considered the submission in relation to the export of medicine or medical devices and recommend that an exception that is consistent with the purposes of the statutory regime be set out in the regulations to avoid any ambiguity.

7.6.5 Issue 58

Humanitarian Organisations

Regulation 18(1) provides that sanctions imposed by the regulations do not apply in relation to a humanitarian organisation carrying out its humanitarian activities. Humanitarian organisation is defined in regulation 18(2) to include the United Nations (including its programmes, funds, other entities and bodies, specialised agencies, and related organisations); the International Red Cross and Red Crescent Movement; and a non-governmental organisation (NGO) accredited under the New Zealand Disaster Response Partnership. This exception is broad and applies to all sanctions.

The consultation paper asked whether submitters had a view on the definition of humanitarian organisation in regulation 18(2) and whether any other bodies should be added to the definition.

Analysis

One submitter noted that the current definition of humanitarian activities is satisfactory and does not propose changes. Another submitter however raised concerns that regulation 18(2) may be overly restrictive by limiting applicability to organisations accredited under the New Zealand Disaster Response Partnership (NZDRP) and suggests broadening the provision to include other organisations where there are reasonable grounds to believe they are conducting legitimate humanitarian operations related to the war in Ukraine. The submitter also requested that guidance be provided on the definition of "humanitarian activities" for the purpose of regulation 18(1).

Recommendation

We do not recommend any changes to the list of humanitarian organisations under regulation 18 of the RSR. Instead, should organisations believe they should be exempted, they can apply for an exemption through the section 13 process. No change is recommended.

7.6.6 Issue 59

The consultation paper asked whether submitters had any other comments regarding the use of exceptions.

Analysis

One submitter sought clarification on the point that duty holders are not obliged to facilitate the use of regulation 12 exceptions. Another submitter addressed this issue in relation to regulation 12(g), which provides clarity that

duty holders may engage in incidental and necessary dealings to enable New Zealand persons to utilise the exceptions detailed in regulation.

A practical challenge was identified for duty holders that customers seeking to use a regulation 12 exception often do not realise that a duty holder may remain unable to facilitate dealings due to the extraterritorial application of foreign sanctions laws, irrespective of regulation 12(g). To address this challenge, it was recommended that a new provision should be introduced to clarify that regulation 12 does not obligate others to take the steps necessary to facilitate use of a regulation 12 exception.

We note that since regulation 12(g) does not oblige others to take steps to facilitate the use of exceptions in regulation 12 an amendment to the RSR is not required.

Recommendation

We do not recommend additional exceptions in regulation 12.

TOPIC 8: DEFINITIONS AND TERMINOLOGY

The consultation document posed a number of questions about terms and concepts featuring in the RSA and RSR.

8.1 Dealing with Assets and Dealing with Services

'Dealing with assets' and 'dealing with services' are defined in section 5 of the RSA. These terms capture a wide range of activities that are subject to the prohibitions in regulation 10 (the prohibition on dealing with assets of, or for benefit of, sanctioned persons) and regulation 11 (the prohibition on dealing with services). Regulation 10A is the prohibition on dealing with a security of a sanctioned person. The legislation does not contain a definition for 'dealing with a security'.

8.1.1 Issues 60-61

The consultation document asked whether the definition of 'dealing with assets' and 'dealing with services' in section 5 of the RSA are sufficiently clear.

Analysis

The majority of submissions stated that the current definition should be retained. One submitter stated that the definitions are not sufficiently clear and require duty holders to seek external legal advice. That submitter further stated that New Zealand should adopt a 'blocking and freezing' model, rather than a 'not dealing with' model, in order to better align with international practice and facilitate the efficient processing of cross-border transactions.

Recommendation

While most submissions indicated that these definitions are adequate, the review recommends that MFAT give consideration to publishing additional public guidance on the definitions. The question of which model should be applied to asset freezes could benefit from closer consideration in the future. However, in the meantime, the review finds that the existing 'not dealing with' model is fit for purpose and does not require amendment.

8.1.2 Issue 62

The consultation document asked whether 'dealing with a security' should be separately defined. Submitters had various perspectives on this.

Analysis

Overall, most submitters on this issue favoured clarification of that term through regulation or in the RSA.

Recommendation

The review finds that a statutory definition for 'dealing with a security' would be appropriate and be consistent with the other provisions on prohibited dealings. We recommend that dealing with a security be defined in the RSA.

8.2 For the benefit of

Regulation 10(3)(b) provides that a New Zealand person must not deal with any asset if dealing with the asset would otherwise be 'for the benefit of' a sanctioned person. A similar prohibition is in regulation 10A(2)(c) in respect of dealing with securities of a sanctioned person. In addition, under regulation 11(2)(b) a New Zealand person must not deal with a service that is provided to, or 'for the benefit of', a sanctioned person. The use of 'for the benefit of' in these three prohibitions intends to widen the prohibition and capture more dealings than would otherwise be captured.

8.2.1 Issues 63-64

The consultation paper asked whether in relation to each of those prohibitions:

- Is it sufficiently clear what is covered by 'for the benefit of' in each of the circumstances outlined above, and
- Did submitters have any other views on 'for the benefit of' as it relates to these prohibitions.

Analysis

Submitters expressed differing views on the clarity and scope of the phrase 'for the benefit of' within the RSR. Some expressed concern that the term is broad and may capture transactions with several degrees of separation from a sanctioned person, creating compliance uncertainty and operational difficulty, particularly for financial institutions. Overall, submitters indicated that while the term is broadly understood, further clarification or guidance may assist in ensuring consistent interpretation and mitigating unintended impacts.

Recommendation

While most submissions indicated that these definitions are adequate, the review recommends that MFAT give consideration to publishing additional public guidance on these definitions.

6.3 Designated, Sanction, and Sanctioned Person

The consultation paper noted that regulation 4 defines designated persons, assets, and services for the purposes of the RSA. Classifying a person, asset, or service as designated for the purposes of the RSA has several practical effects. The first is that descriptions of any designated person, designated asset, and designated service must be included in the Sanctions Register that MFAT must maintain under section 14 of the RSA. The second is that a person, asset, or service classified as designated is captured by the duty to report under section 15 of the RSA.

6.3.1 Issues 65-68

In light of that context, the consultation paper asked:

- Whether the current definitions are sufficiently clear about which persons, assets, and services are ‘designated’?
- Whether there is sufficient clarity about what the effect of a ‘designated’ classification is?
- Whether the terms 'sanction' and 'sanctioned' are sufficiently clear?
- Whether there is uncertainty as to how the terms 'sanction' and 'sanctioned' relate to 'designated' classification?

Analysis

Submissions on these issues were mixed, with some finding the definitions to be clear, while others stated that their effect can be undermined by how the definitions are applied by banks in practice. Overall, submissions suggest that while the definitions are technically clear, further guidance or simplification may support practical compliance.

One submitter noted that the RSA uses the term ‘designated’ and the RSR uses the terms ‘sanctioned’ and ‘designated’, and stated it would be simpler to use the same terms in both the RSA and the RSR. The submitter recommended that ‘designated asset’ and ‘designated service’, become ‘sanctioned asset’ and ‘sanctioned service’ respectively.

Recommendation

The review finds that these definitions are adequate. The review further recommends that consideration be given to amend the RSR in order to use the RSA term ‘designated’, rather than the terms ‘sanctioned’ and ‘designated’.

6.4 Other terms and concepts in the legislation

6.4.1 Issues 69-70

The consultation paper went on to ask whether there is any other terminology in the RSA/RSR which poses issues in terms of interpretation or ambiguity, and whether there are any terms in the RSA/RSR which could benefit from definition.

Analysis

Submitters stated that the use of multiple definitions for similar concepts creates confusion and should be addressed through future amendments to the RSA and RSR. Two submitters supported expanding the number of defined terms and recommended additional guidance on key concepts such as ‘asset,’ ‘indirectly’, ‘for the benefit of’, ‘owned or controlled’, and ‘travel banned persons’.

Recommendation

The review finds that the present definitions are sufficient. No changes are recommended in response to issues 69-70.

ANNEX 1 - TERMS OF REFERENCE FOR THE RUSSIA SANCTIONS ACT 2022 STATUTORY REVIEW

Background

The New Zealand Parliament unanimously passed the Russia Sanctions Act (**RSA**) on 9 March 2022, following Russia's illegal invasion of Ukraine on 24 February 2022. The RSA gives the Minister of Foreign Affairs the ability to impose sanctions in response to threats to the sovereignty or territorial integrity of Ukraine or another country.

The RSA created a legislative framework for New Zealand to demonstrate its condemnation of Russia's invasion of Ukraine in 2022. The purpose of the Act 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).

The RSA is intended to create a system that, together with the sanctions imposed by New Zealand's international partners, pressures Russia, and others that support Russia, to change course without the need to use armed force. The RSA is also intended to ensure that New Zealanders do not support (advertently or inadvertently, directly, or indirectly) Russia's invasion.

The Objectives of the Statutory Review

This review is required by section 29 of the RSA. The Minister is required to review the operation and effectiveness of the Act and present a report on the review to the House of Representatives. The review presents an opportunity to assess the operation of the legislation and provide recommendations on how it could be improved.

Scope of the Review

The review is focused on the operation and effectiveness of the RSA. Broader questions, such as the merits and efficacy of sanctions generally, and whether New Zealand should have a general autonomous sanctions regime, are outside the scope of this review.

In summary the review will assess:

How has the RSA been operating since it came into force on 9 March 2022?

- How effective is the RSA, and is it fit for purpose?
- Does the RSA strike the appropriate balance between the risk of sanction evasion in New Zealand and the RSA's compliance costs?
- Does the RSA achieve its statutory purposes?

We would also welcome feedback on:

- What is it like to use and interact with the RSA?
- How do you find the mechanics of the RSA and RSR work in practice?
- What is not working satisfactorily?
- What could be done better?

We will consider the operation of the Russia Sanctions Regulations 2022 as part of the Review.

Principles to guide the Review

The following principles will guide the Review:

- Imposing and enforcing sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia) to demonstrate New Zealand's condemnation.
- Reducing the risk that New Zealand individuals and businesses may breach sanctions or be used to evade sanctions.
- Ensuring New Zealand is not perceived as a soft route to evade sanctions imposed by other countries.
- Ensuring any non-compliance, breaches or evasions are dealt with swiftly and effectively by making best use of New Zealand's existing regulatory and enforcement frameworks.
- Managing, as appropriate, disproportionate impacts on New Zealand individuals and businesses.

Process for the Review

The Review process will be conducted by MFAT officials and will include:

- The collection of views on the operation and effectiveness of the RSA. This will be done through consultation with government agencies and affected stakeholders.
- Identifying how the statutory framework may be improved.
- Analysis of the feedback on the RSA which will be fed into the final report on the outcome of the review, to be presented by the Minister to the House of Representatives.

ANNEX 2 – GLOSSARY OF TERMS

AML/CFT	Anti-Money Laundering/Countering Financing of Terrorism
AML/CFT Act	Anti-Money Laundering and Countering Financing of Terrorism Act 2009
AML/CFT supervisors	The Department of Internal Affairs, the Financial Markets Authority, and the Reserve Bank of New Zealand, are the entities which regulate reporting entities covered by the AML/CFT Act.
Asset	Defined in section 5 of the Russia Sanctions Act (RSA).
Associate	Defined in regulation 5(2) of the Russia Sanctions Regulations (RSR).
Commissioner	Means the Commissioner of Police (section 5 of the RSA).
CEA	Customs and Excise Act 2018.
Dealing with assets	Defined in section 5 of the RSA.
Dealing with services	Defined in section 5 of the RSA.
Duty holder	Defined in section 5 of the RSA.
Entity	Defined in section 5 of the RSA.
Luxury Good	Defined in regulation 5(1) of the RSR.
MFAT	Ministry of Foreign Affairs and Trade.
Minister	Minister of Foreign Affairs.
Person	Defined in section 5 of the RSA.
Personal Effect	Defined in regulation 5(5) of the RSR.
Relative	Defined in regulation 5(1) of the RSR.
RSA	Russia Sanctions Act 2022.
RSR	Russia Sanctions Regulations 2022.
SAR	Suspicious Activity Report.
Service	Defined in section 5 of the RSA.

ANNEX 3 - PREVIOUS REVIEWS OF THE RUSSIA SANCTIONS ACT AND REGULATIONS

The Ministry has commissioned several reviews of the RSA framework and has issued a Regulatory Charter.

Post implementation review for the Russia Sanctions Act and the Russia Sanctions Regulations 2022

The Ministry of Foreign Affairs and Trade undertook an internal review of the RSA and RSR in November 2022. The review was finalised on 16 November 2022 and submitted to the Minister of Foreign Affairs. The Review found that the development of legislation designed to respond to Russia's illegal war in Ukraine was appropriate, because it best met the Government's objectives to react with urgency to condemn the threat to the sovereignty and territorial integrity of Ukraine, including by exerting pressure on Russia and Belarus. The internal review found that RSA achieved its objective of complementing or reinforcing sanctions by other countries.

The internal review found that:

> *"The sanctions regime as adopted instead provides benefits to New Zealand and its people by demonstrating, and being seen to demonstrate, principled defence of and staunch support of the UN Charter, international law and the international rules-based system."*

The internal review found further that the RSA does not impose direct costs imposed by the RSA itself as it is framework legislation. The internal review noted that the RSA and RSR impose some systems and compliance costs on business and government, which are unavoidable as sanctions necessarily impact on the activities that New Zealand businesses and individuals can undertake.

The internal review elaborated on the costs associated with the RSA and RSR. It noted that while sanctions target (primarily) Russian individuals and entities, it is New Zealand persons that have to comply. The review noted that compliance costs include:

- Costs for duty holders in screening persons and transactions and reporting suspicious activity;
- Costs for exporters and importers through lost trade and in finding new clients or suppliers;
- Costs for New Zealand persons to conduct due diligence on their activities;
- Costs for Government for administering the regime; and
- Costs for New Zealanders impacted by the regime either directly or from over-compliance.

The internal review noted that:

> "We also consider these costs are commensurate with the aims of the legislation. While globally adopted sanctions, and Russia's response to them, are having broad economic impacts that will affect New Zealand e.g. by exacerbating supply chain disruptions and rising global food and energy prices, this would have occurred without New Zealand enacting sanctions. …
>
> While there are some individual businesses that are being disproportionately impacted, for example importers that are reliant on products of Russian origin or exporters for which Russia is an important market, information gleaned from enquiries logs and exemption requests suggests that for the most part

businesses have found other options. Moreover, the impacts on these businesses may have occurred without New Zealand enacting sanctions due to other countries' sanctions impacting the global payments system, as well as commercial decisions.

We found this internal review constituted an important assessment of the initial impact of the RSA and RSR. We note lessons it identified in key areas.[10]

The Smol Review

In February 2023, David Smol was commissioned to produce an independent review of the Russia sanctions regulatory framework. The reviewer was asked to comment on the effectiveness of the design of the regulatory framework, and to provide recommendations for improvements to systems, policies or processes that may be relevant in the lead up to the present review.

The reviewer found that the Ministry of Foreign Affairs and Trade had taken a deliberate approach to building a well-functioning regulatory regime, and that the regime was fit-for-purpose and in accordance with the legislation.

The reviewer recommended action in a range of areas, including further guidance to promote compliance easier; reviewing definitions and thresholds; and looking further at the relationship between the RSA and Anti-Money Laundering legislation. The reviewer also recommended ensuring clear accountabilities and consideration of more public reporting.

In particular, the Smol Review identified several areas for further focus, including:

- Continuing to work with regulated entities 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), including consideration of the definition of associates of sanctioned persons.
- Making the regime more responsive through the provision of additional guidance on new classes of sanctions and setting target times for dealing with inquiries.
- Reviewing the application of definitions and thresholds within the regulations, which may be capturing some activities unnecessarily or where enforcement is not feasible.
- Continuing to test appetite for risk.

[10] **Resource**. Resource the right people with the right skillsets, for the right length of time and ensure these people have opportunity to maximise their contributions to the mahi.
Align and govern. Ensure that our intent and objectives are aligned internally within MFAT, obtain up to date information on context internationally, and work with our New Zealand partner agencies to be clear on roles and expectations, oversee effective integration across the system, and design fit for purpose processes.
Communicate and collaborate. Ensure we are clear, consistent and responsive in our organisational planning and communication with stakeholders, including the public and regulated communities.
Enable. Enable a collaborative working environment that is underpinned by a culture that is inclusive and supportive of different views and perspectives.
Equip. Equip our people with modern technologies and information that enable productivity and are aligned with new ways of working.

- Continuing 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.
- Maintaining a focus on systematic environmental scanning to enable early identification of emerging risks.
- Consideration of more public reporting of relevant dimensions of the regime, to promote transparency and awareness.
- Ensuring clear accountabilities within the Russia sanctions team to maintain and improve the regulatory regime.
- Taking 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.
- Planning for the integrated review of the regulatory regime.

The report noted that resourcing (at that time at 9 positions) was “at the lower end of the feasible range for stewardship of a regulatory system with the characteristics of the Russia sanctions regime”.