

Russia Sanctions – Compliance Guide

FAQ FOR NGOS



CANADA

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Since the Russian invasion of Ukraine, countries and regional organisations around the world have imposed sanctions on Russia and Belarus, as a means of putting pressure on Russia's government to end the invasion. These sanctions take different forms and have different targets (sectors/individuals/companies etc.).

While the objective of these sanctions is not to affect organisations such as NGOs who operate in or have links with Russia, inevitably these sanctions might have a direct or indirect impact on them.

The following questionnaire has been created to collect legal research, that will in turn help NGOs understand how sanctions regimes might impact them and to understand how some of these risks could be managed.

Jurisdiction	Canada
Date Last Updated	19 July 2022

Public regulatory/executive body responsible for Sanctions

The Government of Canada

Consolidated List

Special Economic Measures (Russia) Regulations (SOR/2014-58) ("Russia Regulations"):

- Schedule 1, Part 1, lists the 700+ sanctioned individuals.
- Schedule 1, Part 1.1, lists the individuals sanctioned for gross human rights violations.
- Schedule 1, Part 2, Schedule 2 and Schedule 3 list the 160+ sanctioned entities.

Check the Regulation in this link: <https://laws.justice.gc.ca/eng/regulations/SOR-2014-58/FullText.html#h-810988>

Relevant Guidance

Canada provides limited guidance on its sanctions regime.

Answers to general questions are found in this link:

https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/faq.aspx?lang=eng

Key Points to note

Do the Russia Sanctions apply to you?

Is there any reason to think that you have any connection to Russia or Russians?

Canadian regulations imposing sanctions on Russia (“Russia Regulations”) apply to persons in Canada and any Canadian outside Canada.¹ Thus, the Russia Regulations may apply to your organization’s operations within Canada, and, if your organization is incorporated in Canada, to its operations outside Canada.²

If your organization falls within the scope of the Russia Regulations, its activities must comply with the prohibitions set out in the regulations. These include asset freeze sanctions that cover prohibitions on:

- dealing with the property of designated persons³ listed under Russia Regulations Schedule 1, as well as facilitating related transactions and providing related financial services (section 3);
- making goods available to designated persons listed under Russia Regulations Schedule 1;
- providing financial or related services to, or for the benefit of, designated persons listed under Schedule 1.

Your organization’s activities would also be subject to certain financial and trade restrictions, including prohibitions on:

- providing certain new debt financing for designated persons listed in schedules 2 and 3 (Russia Regulations, section 3.1(1));
- providing new equity financing for designated persons listed under Schedule 2 (Russia Regulations, section 3.2(1));
- exporting, selling, supplying or shipping certain goods related to oil exploration or production (Russia Regulations, section 3.3);
- the docking in or passing through Canada of ships holding certain associations with Russia (Russia Regulations, section 3.4);
- importing, purchasing or acquiring certain petroleum-related goods (Russia Regulations, section 3.5);
- exporting, selling, supplying or shipping restricted goods to Russia or any person in Russia;⁴
- providing restricted technologies to Russia or any person in Russia⁵

Persons in Canada or any Canadian outside Canada must also not knowingly “do anything that causes, facilitates or assists in, or is intended to cause, facilitate or assist in”, the prohibited activities (Ukraine Regulations, section 5).

Activities should be assessed on a case-by-case basis. For example, a Canadian organization’s provision of goods or services for a hospital owned by a designated person might fall within the scope of sanctioned activities. Conversely, a Canadian organization making payments through non-designated banks to non-designated Russian employees, in relation to non-prohibited activities, might not fall within the scope of sanctions.

¹ Special Economic Measures (Russia) Regulations (SOR/2014-58) (“Russia Regulations”), section 3 “Prohibitions”, <https://laws.justice.gc.ca/eng/regulations/SOR-2014-58/FullText.html#h-810874>.

² “In this Act, Canadian means a person who is a citizen within the meaning of the Citizenship Act or a body corporate incorporated or continued by or under the laws of Canada or of a province” (Special Economic Measures Act, section 2, <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>).

³ A “designated person” is a “person who is in Russia, or is a national of Russia who does not ordinarily reside in Canada, and whose name is listed in either one of Schedules 1, 2 or 3” to the Russia Regulations (Russia Regulations, section 1).

⁴ Russia Regulations, section 3.6(1). Restricted goods are listed in the “Restricted Goods and Technologies List”.

⁵ Russia Regulations, section 3.6(2). Restricted technologies are listed in the “Restricted Goods and Technologies List”.

The nature of your organization and its activities may also bring it within the scope of exceptions and exemptions to the prohibitions including:

- general exemptions to the application of prohibitions including, e.g., for transactions with certain diplomatic, inter-governmental, non-governmental organizations.⁶
- prohibition-specific exceptions and exemptions including, e.g., the non-application of debt- and equity-related prohibitions to activities occurring before the person was designated (Russia Regulations, sections 3.1(2) and 3.2(2)); an exemption for the export of restricted goods for use by media (Russia Regulations, section 3.6(3)(a)).

Caution should, in general, be exercised in verifying whether your organization is involved with persons or activities that could trigger sanctions. For example, you may wish to assess new and existing contracts, partnerships or other associations for connections to designated persons or prohibited activities. Persons not currently designated, or activities that are not currently prohibited, may become so in future, as Canada continues to update its sanctions regulations.

With which sanctions regimes may you and/or your employees need to comply as a matter of law?

If your organization falls within the scope of application of the sanctions outlined in the response to question 1, it must comply with the prohibitions and other obligations under the Russia Regulations.

However, as discussed in the response to question 1, prohibited activities may fall under certain exceptions and exemptions to the prohibitions. While the Russia Regulations do not contain a general exemption for humanitarian or charitable activities, there is a narrower exemption for transactions with “international organizations with diplomatic status, agencies of the United Nations, the International Red Cross and Red Crescent Movement, or Canadian non-governmental organizations that have entered into a grant or contribution agreement with Foreign Affairs, Trade and Development Canada”.⁷

If your activities are prohibited, and are not subject to an exception or exemption to the prohibition, you may be able to obtain a ministerial permit to undertake the prohibited activity.⁸ The Government of Canada issues permits on an exceptional basis for a specific activity or transaction, or a class of activity or transaction, that is otherwise prohibited.⁹ At present, the Government of Canada is only considering permits and applications related to specific end-uses including medical supply and humanitarian needs in Russia.¹⁰ It is no longer issuing new permits for the export and brokering of controlled goods and technologies to Russia.¹¹

Have you agreed to comply with sanctions with which you would not be required to comply as a matter of law by contractual agreements (e.g. with lenders, in donor agreements)?

In agreeing to contracts, or reviewing existing contracts, your organization may wish to seek legal advice in relation to any provisions with implications regarding Canadian sanctions. These could include, for

6 Government of Canada, “Canadian Sanctions Related to Russia”, see “Exceptions” section, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/russia-russie.aspx?lang=eng#a2.

7 Government of Canada, “Canadian Sanctions Related to Russia”, see “Exceptions” section, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/russia-russie.aspx?lang=eng#a2.

8 Special Economic Measures Act (S.C. 1992, c. 17), section 4(5), <https://laws-lois.justice.gc.ca/eng/acts/S-14.5/>

9 Special Economic Measures (Russia) Permit Authorization Order (SOR/2014-59), <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-59/page-1.html>; Government of Canada, “Permits and Certificates”, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/certificates_permits-certificats_permiss.aspx?lang=eng (we note that on this web-site the Government of Canada advises organisations to consult a lawyer to determine whether a proposed activity or transaction is prohibited before applying for a permit).

10 Government of Canada, “Notice to Exporters and Brokers – Export and Brokering of items listed on the Export Control List and the Brokering Control List to Russia”, <https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/1071.aspx?lang=eng>.

11 Government of Canada, “Notice to Exporters and Brokers – Export and Brokering of items listed on the Export Control List and the Brokering Control List to Russia”, <https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/1071.aspx?lang=eng>.

example, obligations to comply with sanctions laws, or, conversely, obligations the performance of which could lead to a contravention of sanctions laws. They could also include more general force majeure and related clauses, that may provide a defence for non-performance of a contractual obligation as a result of sanctions requirements.

Connections with Russian Individuals and Businesses

Are you engaging with any person specifically targeted by any of these sanctions?

A number of the sanctions discussed in the response to question 1 apply with reference to designated persons. As part of ensuring compliance with those sanctions, organizations may verify whether they have links to designated persons. Canada lists designated persons (individuals and entities) under Schedules 1, 2 and 3 of the Russia Regulations, available at this link: <https://laws.justice.gc.ca/eng/regulations/SOR-2014-58/FullText.html#h-810988>

Schedule 1 lists persons who there are reasonable grounds to believe are: (i) engaging in activities that “directly or indirectly facilitate, support, provide funding for or contribute to” violations of Ukraine’s sovereignty or territorial integrity, or are obstructing international organization work in Ukraine; (ii) have participated in gross and systematic human rights violations in Russia; (iii) are former or current senior Russian government officials; and, (iv) associates of persons listed for reasons (i), (ii) or (iii) (Russia Regulations, sections 2(a)-(c)).

Additional categories under Schedule 1 include entities owned, held or controlled, directly or indirectly, by a person in categories (i) to (iv), or by Russia or acting on behalf of or at the discretion of Russia; and, the senior officials of those entities. Schedule 1 also includes the family members of persons in categories (i) to (iv), as well as senior officials of designated entities (Russia Regulations, section 2(d)-(g)).

Schedules 2 and 3 list entities that, there are reasonable grounds to believe, are owned, held or controlled, directly or indirectly, by a person in categories (i) to (iii), above, or acting on their behalf or direction; or, are owned, held or controlled, directly or indirectly, by Russia or acting on Russia’s behalf or direction (Russia Regulations, section 2.1).

Are you engaging with any entity owned or controlled by any of these sanctions?

Canada designates entities owned, held or controlled, directly or indirectly by other designated persons under Schedules 1, 2 and 3 (Russia Regulations, section 2 and Section 2.1). (For additional detail on those Schedules, please see the response to question 4.) Thus, sanctions that refer to “designated persons” also cover entities that are owned or controlled by designated persons.

Caution should also be exercised in relation to any non-designated entity that may be owned or controlled by a designated person. As the Canadian government continues to update its list of designated persons, entities that are not currently listed may become so in future. In addition, certain prohibitions could cover activities involving entities that are not themselves designated, but are associated with designated persons. For example, the prohibition on dealing in property held “on behalf of” of a designated person could implicate dealings with non-designated entities acting on behalf of a designated person (Russia Regulations, section 3(a)).

Are you importing or exporting any goods that may be subject to import/export restrictions?

Persons in Canada and Canadian nationals regardless of location are prohibited from exporting, selling, supplying or shipping to Russia or any person in Russia any goods or technologies that are referred to in the Restricted Goods and Technologies List.¹² The Restricted Goods and Technologies List can be found here.

There are exceptions to the application of the goods and technologies restrictions, which cover, for example, certain goods/technologies used by the media, in nuclear or chemical weapons safeguarding, and in relation to aircraft maintenance, as well as certain goods used in space, consumer communication devices, and personal effects exported for personal use in Russia.¹³

Additional restrictions include a prohibition on allowing Russian-registered ships, or other ships benefiting Russia, persons in Russia or designated individuals, to dock in or pass through Canada (Russia Regulations, section 3.4.). Prohibitions also apply in relation to importing or purchasing certain petroleum goods from Russia, unless the sales contract was entered into before the sanction came into force (Russia Regulations, section 3.5). The list of petroleum goods is available here. Certain trade activities related to luxury goods and to the manufacture of weapons are also subject to prohibitions (Russia Regulations, sections 3.8 and 3.9)

Do you have any involvement with activities in the Donetsk, Luhansk and Crimea regions, which are subject to specific regimes?

Canada applies sanctions under the Special Economic Measures (Ukraine) Regulations (SOR/2014-60) (“Ukraine Regulations”), for the following regions:

- “Crimea region of Ukraine”: the Crimea Region of Ukraine means the Autonomous Republic of Crimea and the city of Sevastopol, and includes their land areas and territorial sea.
- “DNR region of Ukraine”: the so-called Donetsk People’s Re-public and the territory it controls in the Donetsk oblast of eastern Ukraine.
- “LNR region of Ukraine”: the so-called Luhansk People’s Re-public and the territory it controls in the Luhansk oblast of eastern Ukraine.¹⁴

Asset-freeze sanctions under the Ukraine Regulations prohibit any person in Canada and any Canadian regardless of location from:

- (a) dealing in any property, in any country, that is owned, held or controlled by or on behalf of a designated person;
- (b) entering into or facilitating, whether directly or indirectly, any transaction related to such a property dealing;
- (c) providing any financial or other related service for such a property dealing;
- (d) making available any goods to a designated person or to someone acting on their behalf, no matter their location;
- (e) providing any financial or related service to or for the benefit of a designated person (Ukraine Regulations, section 3).

The list of persons designated for the purpose of the Ukraine Regulations can be found here.

¹² Russia Regulations, sections 3.6(1)-(2); see also Regulations Amending the Special Economic Measures (Russia) Regulations (SOR/2022-65).

¹³ Russia Regulations, section 3.6(3)-(4). ‘Consumer communication device’ is defined in Russia Regulations, section 3.6(5), and includes (inter alia) devices such as computers, mobile phones, televisions and recording devices.

¹⁴ Special Economic Measures (Ukraine) Regulations (SOR/2014-60) (“Ukraine Regulations”), <https://laws.justice.gc.ca/eng/regulations/SOR-2014-60/page-1.html#h-811190>, section 1.

Exemptions to the asset-freeze sanctions include, amongst others, “any transaction to international organizations with diplomatic status, a United Nations agency, the International Red Cross and Red Crescent Movement, or Canadian non-governmental organizations that have entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development” (Ukraine Regulations, section 4(d)).

For activities in the Crimea, DNR and LNR regions of Ukraine, it is also prohibited for any person in Canada and any Canadian regardless of location to:

- (a) make an investment that involves a dealing in any property located in these regions that is owned, held or controlled by these regions or a person in these regions, or a person acting on behalf of or at the direction of these regions or a person in these regions;
- (b) provide or acquire financial or other related services with respect to an investment referred to in paragraph (a);
- (c) import, purchase or acquire goods, wherever situated, from these regions or any person in these regions;
- (d) export goods destined for these regions or sell, supply or transfer goods, wherever situated, to any person in these regions;
- (e) provide technical assistance to these regions or any person in these regions;
- (f) provide financial or other services related to tourism to, or acquire such services from, these regions or any person in these regions; or
- (g) dock a cruise ship in the Crimea region of Ukraine,¹⁵ unless there is an emergency situation (Ukraine Regulations, section 4.3(2)).

In addition, as noted in the response to question 1, persons in Canada or any Canadian outside Canada must not knowingly “do anything that causes, facilitates or assists in, or is intended to cause, facilitate or assist in”, the prohibited activities (Ukraine Regulations, section 5).

Contravening the Ukraine Regulations is an offence under the Special Economic Measures Act. The maximum penalty under summary conviction is a fine of CAD 25,000 and/or a 1-year prison term. The maximum penalty on indictment is a 5-year prison term.¹⁶

Payments and Investments

Do you have a charitable trust or foundation that might involve dealing with equity/ debt instruments issued by, or making loans available to Russian state owned companies, persons connected with Russia, or the Government of Russia?

Persons in Canada and Canadian nationals are prohibited from transacting in, providing financing for, or otherwise dealing in new debt of

- longer than 30 days’ maturity, in relation to a designated person, the property of a designated person, or the interests or rights in property of a designated person, listed in Schedule 2 (Russia Regulations, section 3.1(1));
- longer than 90 days’ maturity, in relation to a designated person, the property of a designated person, or the interests or right in property of a designated person, listed in Schedule 3 (Russia Regulations, section 3.1(1.1)).

¹⁵ This applies to any cruise ship “that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament” (Ukraine Regulations, section 4.1(g)).

¹⁶ Special Economic Measures Act, Section 8; see also Government of Canada, “Frequently Asked Questions”, section “Q: What are the consequences of not complying with sanctions?”, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/faq.aspx?lang=eng#a10. Government of Canada, “Frequently Asked Questions”, section “Q: What are the consequences of not complying with sanctions?”, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/faq.aspx?lang=eng#a10

New debt includes: bonds, loans, debentures, extensions of credit, loan guarantees, letters of credit, bank drafts, bankers' acceptances, discount notes, treasury bills, commercial paper and other similar instruments (Russia Regulations, sections 3.1(1) and 3.1(1.1)).

Persons in Canada and Canadian nationals are also prohibited from transacting in, providing financing for, or otherwise dealing in new equity financing in relation to a designated person, the property of a designated person, or the interests or rights in property of a designated person, listed in Schedule 2 (Russia Regulations, section 3.2(1)).

In addition, as noted in the response to question 1, persons in Canada or any Canadian outside Canada must not knowingly "do anything that causes, facilitates or assists in, or is intended to cause, facilitate or assist in", the prohibited activities.¹

The prohibitions on new debt and equity financing do not apply to activities undertaken before the designated person was listed in the relevant schedule (Russia Regulations, sections 3.1(2) and 3.2(2)).

Are you affected by restrictions on processing funds (e.g. making payments where Russian banks have been removed from SWIFT)?

Before conducting any transfer of funds, your organization should verify whether it is subject to any prohibitions applicable to the provision of funds (e.g. to a sanctioned individual), or to dealings with the financial institution that would transfer the funds.

Persons in Canada and Canadian nationals are subject to asset-freeze sanctions that could affect the transfer or processing of funds. These include prohibitions on:

- dealing in any property, wherever situated, that is owned, held or controlled by or on behalf of a designated person whose name is listed in Schedule 1;²
- the provision of financial services or other related services in respect of a property dealing prohibited under Section 3(a) of the Russia Regulations (Russia Regulations, section 3(c)); and
- the provision of financial or related services to or for the benefit of a person designated under Schedule 1 (Russia Regulations, section 3(e)).

These prohibitions would, for example, restrict the transfer of funds to staff or suppliers in Russia if that transfer would require the services of a bank that is listed as a designated person.

Persons in Canada and Canadian nationals are also subject to a sector-specific prohibition on the provision of financial services related to goods whose export, sale, supply or shipment is prohibited in relation to certain oil exploration or production activities (Russia Regulations, section 3.3(2)).

In addition, as noted in the response to question 1, persons in Canada or any Canadian outside Canada must not knowingly "do anything that causes, facilitates or assists in, or is intended to cause, facilitate or assist in", the prohibited activities.³

Are you affected by restrictions on access by Russian individuals to local bank accounts?

Please see the information in the responses to questions 1, 8 and 9, above, on sanctions affecting the provision of financial services, and dealings with the assets of designated persons. They include prohibitions, for example, on the provision of financial services to designated persons, which would prevent designated Russians from accessing local banking services.

¹ Russia Regulations, section 5; see also Regulations Amending the Special Economic Measures (Russia) Regulations (SOR/2022-125).

² Russia Regulations, section 3(a). Persons designated under Schedule 1 include certain banks.

³ Russia Regulations, section 5; see also Regulations Amending the Special Economic Measures (Russia) Regulations (SOR/2022-125).

Are there any sanctions that apply to using or trading cryptoassets?

The Russia regulations do not include sanctions that relate specifically to using or trading cryptoassets. However, dealings with cryptoassets could be subject to the asset-freeze prohibitions discussed in response to question 1. Thus, your organization may wish to apply the same risk assessment to using or trading cryptoassets as it does to other activities that may be subject to prohibition

Exemptions and Other Points to Note

To the extent there are restrictions which apply, can you apply to relevant authorities for licences, e.g. “in connection with the performance of any humanitarian assistance activity”?

Please see the information in the response to question 2, above, on applying for permits to undertake prohibited activities, including in relation to medical supply and humanitarian needs in Russia.

Other points to consider

Prohibitions in relation to the provision of services

The Russia Regulations prohibit any person in Canada and any Canadian outside Canada from providing to Russia or to any person in Russia certain services, in relation to specified industries.¹ Relevant services include, for example, construction work, computer and related services, and research and development services.² Relevant industries cover certain mining, extraction quarrying, manufacturing, land transport and pipeline transport activities.³

Penalties in case of non-compliance

Contravening the Russia Regulations is an offence under the Special Economic Measures Act. The maximum penalty under summary conviction is a fine of CAD 25,000 and/or a 1-year prison term. The maximum penalty on indictment is a 5-year prison term.⁴

Sanctions in relation to Belarus

Canada imposes sanctions on Belarusian persons under the Special Economic Measures (Belarus) Regulations.⁵ Like the Russia Regulations, the Belarus Regulations provide for the listing of persons, applies prohibitions on activities involving listed persons, and applies other trade and financial restrictions in relation, for example, to petroleum products.⁶ Those prohibitions are subject to similar exceptions and exemptions (including for transactions with certain intergovernmental and non-governmental organizations); it is also possible to apply for a permit authorizing activities that are otherwise prohibited.⁷

1 See Russia Regulations, section 3.10(1) and Schedule 8.

2 Russia Regulations, Schedule 8 Part 1.

3 Russia Regulations, Schedule 8 Part 2; and Regulations Amending the Special Economic Measures (Russia) Regulations (SOR/2022-172).

4 Special Economic Measures Act, section 8; see also Government of Canada, “Frequently Asked Questions”, section “Q: What are the consequences of not complying with sanctions?”, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/faq.aspx?lang=eng#a10.

5 Special Economic Measures (Belarus) Regulations (SOR/2020-214) (“Belarus Regulations”).

6 See, for example, Belarus Regulations, sections 2 and 3.

7 Belarus Regulations; Special Economic Measures Act (S.C. 1992, c. 17), section 4(5), <https://laws-lois.justice.gc.ca/eng/acts/S-14.5/>.