

## Article Information

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## Intellectual Property & Australian Sanctions against Russia

**As many would know, the Australian Government has applied targeted sanctions against Russia, Belarus, and persons and entities that are complicit in the war in Ukraine.**

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These sanctions are wide ranging and affect a variety of industries and sectors. Australia’s sanction laws are the *Autonomous Sanctions Act 2011* (Cth), the *Autonomous Sanctions Regulations 2011* (Cth), and the *Charter of the United Nations Act 1945* (Cth) and its various regulations (collectively, **Australian Sanctions Law**).

These sanctions restrict, among other things, making assets available to, or for the benefit of, designated persons or entities or dealing with “controlled”<sup>[1]</sup> assets.

The definition of asset under the *Autonomous Sanctions Act* is broad:

‘asset’ means:

- (a) an asset of any kind or property of any kind, whether tangible or intangible, movable or immovable, however acquired; and
  
- (b) a legal document or instrument in any form (including electronic or digital) evidencing title to, or interest in, such an asset or such property.

Regulation 15 of the *Autonomous Sanctions Regulations* prohibits a person who holds a controlled asset from using or dealing with it, allowing it to be used or dealt with, or facilitating a use of or dealing with the asset.

As intangible property, these sanctions would clearly apply to intellectual property, such as trade marks, and patents.

IP Australia has advised that it is now unable to grant an IP Right to, or for the benefit of, a person/entity that is on the Consolidated List who is targeted by sanctions under Australian Sanctions Law. If IP Australia determines that an application or service is subject to sanctions in the processing of that application, all service will be suspended.

Australians who are seeking to obtain or maintain IP in Russia may be impacted by the sanctions in respect of making payments to Rospatent or the Eurasian Patent Organisation.

Recently, Russia has passed laws which allow for the unauthorised use of intellectual property of businesses from “unfriendly countries”. Australia has been named as an “unfriendly country”, along with the United States, Canada, Switzerland, Norway, Iceland, the United Kingdom, Japan, South Korea, New Zealand, Singapore, Taiwan and all members of the European Union.

Russia’s listing of Australia as an “unfriendly country” means that Russian courts and tribunals may not be permitted to assist Australian entities with enforcement of their intellectual property rights in Russia. This is likely to result in a limitation of the rights of Australian IP owners to prevent infringement in Russia.

There have also been reports that Russia is now requiring that any IP royalties payable to an entity from “unfriendly countries” be paid in Russian Rubles via accounts opened with a Russian bank.

Clearly, the Australian Sanctions Law and Russian laws in response create new challenges for those organisations which may deal with Russian companies or have Russian customers.

It is recommended that companies with intellectual property assets in Russia or who may use or licence their intellectual property in Russia, develop strategies for dealing with the Australian and international sanctions regime. These strategies may range from, minimising business with Russian customers, suspending any intellectual property applications with Rospatent or the Russian Trade Mark Office, and avoiding the transfer of money and IP assets to designated Russian organisations, persons or companies.

Companies should seek legal advice on the practical steps they can take to protect their intellectual property rights, while not breaching Australian or other applicable sanctions regimes. While the spotlight is on Russian sanctions for now, all other Australian Sanctions Laws must be complied with.

On a more general level, companies which do business in Russia should seek legal advice about the impact of sanctions on their operations. Sanctions issues may now arise in relation to routine business activities, such as the payment of dividends on shares, because of the wide scope of the Australian Sanctions Law and the restrictions imposed on dealing with designated persons or entities and controlled assets.

Piper Alderman has an internationally recognised intellectual property law and financial services teams who would be happy to assist on any of these issues.

Please contact Tim O’Callaghan, Partner (Intellectual Property) on 8205 3450 or [tocallaghan@piperalderman.com.au](mailto:tocallaghan@piperalderman.com.au) or Shannon Adams, Partner (Financial Services and FinTech) on 08 8205 3431 or [sadams@piperalderman.com.au](mailto:sadams@piperalderman.com.au) if you require any assistance.

[1] Autonomous Sanctions Regulations 2011, reg 3.