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As Russia Sanctions Mount, FinCEN Issues Advisory on Kleptocracy and Foreign Public Corruption



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Typologies of Foreign Public Corruption The advisory highlights wealth extraction and laundering illicit proceeds as key typologies of kleptocracy and corruption, discussing common schemes employed in relation to each. A. Wealth Extraction With respect to wealth extraction corruption, the advisory discusses two forms: (1) bribery and extortion; and (2) misappropriation and embezzlement. Bribery and extortion schemes involve payments to government officials to obtain business benefits from governmental agencies, such as to "influence political outcomes, secure lucrative contracts with governments or state-owned enterprises, gain access to natural resources, or obtain fraudulent documents such as passports or visas, among other purposes." To conceal the

government official's role, these schemes often involve third-party facilitators, entities owned or controlled by family members or close associates of government officials, accounts outside of the government official's country of residence, and/or shell companies or other opaque corporate structures. Misappropriation and embezzlement schemes involve theft, diversion, or misuse of public resources for the personal enrichment of government officials. In these schemes, "[p]ublic officials or their associates may exploit or deceive corporations ... into redirecting government resources for their own profit." FinCEN notes that several sectors are particularly vulnerable to this type of corruption, including the "defense and health sectors, large infrastructure projects, and development and other types of assistance." B. Laundering of Illicit Proceeds With respect to the laundering of illicit proceeds, FinCEN highlights the use of shell companies and offshore financial centers, along with purchases of real estate, luxury goods, and other high-value assets, as common mechanisms for concealing corrupt proceeds. FinCEN warns that "[c]orrupt actors often use shell companies to obscure the ownership and origin of illicit funds," sometimes leveraging family members and close associates to further obscure their involvement. To curb the use of shell companies in the United States, FinCEN has begun taking steps such as requiring financial institutions to collect beneficial ownership information for legal entity customers and working to implement the Corporate Transparency Act, which will require that companies report their natural person beneficial owners for inclusion in a database available to law enforcement. For those attempting to launder proceeds gained through corruption, this may lead to greater reliance on offshore financial centers, which traditionally afford limited transparency into beneficial ownership. In the advisory, FinCEN also warns that corrupt officials often launder illicit proceeds by acquiring high-value assets such as "luxury real estate and hotels, private jets, artwork, and motion picture companies." These purchases may be made through anonymous shell companies or straw purchasers as well as through layered and/or opaque transactions to avoid transparency into beneficial ownership. Here, FinCEN suggests that schemes of this nature will often involve—wittingly or unwittingly—real estate professionals as well as other brokers and professionals (e.g., art dealers, lawyers) whose services may be necessary in the creation of legal entities and relationships to support these money laundering transactions. **Red Flag Indicators of Corruption** The advisory identifies 10 key red flag indicators associated with kleptocracy and foreign public corruption. In addition to other traditional indicators of corruption (e.g., fake invoices, higher-than-market rates, or government contracts in high-risk jurisdictions), U.S. companies across industries should pay particularly close attention to the following indicators of potential corruption and other misconduct by kleptocrats:

- Transactions involving public officials related to high-value assets, such as real estate or other luxury goods, that are not commensurate with the reported source of wealth for the public official, or that fall outside that individual's normal pattern of activity or lifestyle.
- Transactions involving public officials and funds moving to and from countries with which the public officials do not appear to have ties.
- Use of third parties to shield the identity of foreign public officials seeking to hide the origin or ownership of funds, for example, to hide the purchase or sale of real estate.
- Assets held in the name of intermediate legal entities whose beneficial owner or owners are tied to a kleptocrat or a kleptocrat's family member.

Key Takeaways In the current climate, compliance missteps could have grave consequences, particularly due to the high-profile nature of the Russian invasion of Ukraine, the rapidly evolving sanctions landscape, and enhanced DOJ enforcement resources laser focused on the efforts of kleptocrats to avail themselves of U.S. markets. Under these circumstances, companies should carefully assess the risks their operations may raise with regard to kleptocrats and examine their compliance policies and procedures to ensure that they address the guidance in this advisory.

Authors

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