

RAPID RESPONSE BRIEF

US BENEFICIAL OWNERSHIP: ADDRESSING RUSSIA CORRUPTION RISKS

Malign actors from Russia and around the world use a variety of methods to disguise the ownership of assets. Over decades, and especially since February 2022, the United States, European Union, United Kingdom, and other international partners have mobilized unprecedented resources to address collective vulnerabilities in the financial system, to make it harder and costlier for sanctioned individuals and entities, money launderers, kleptocrats, and other criminals to move and store value.

A remaining vulnerability requires governments, including the United States, to close loopholes and identify the ultimate beneficial owner of assets, including companies. In the United States, the lack of a comprehensive national beneficial ownership registration scheme for companies allows these malign actors to operate with little to no scrutiny in both the US and international financial system, as well as in key sectors such as real estate. Congress passed important reforms through the Corporate Transparency Act in 2020, but implementation may take years. This rapid response brief outlines some of the current initiatives underway as well as obligations to address beneficial ownership identification challenges.

How does this relate to the Ukraine Crisis?

- The US and international partners have sanctioned many Russian oligarchs and senior government officials as well as their family members and businesses.
- Many sanctioned individuals and entities own assets around the world using family members, opaque corporate structures, and nominee directors and shareholders to obscure their control over the assets.
- The United States government has identified Russia as a jurisdiction of particular concern because of the “nexus between corruption, money laundering, malign influence and armed interventions abroad, and sanctions evasion.”¹
- Despite the reforms underway, the United States may take years to implement internationally recognized beneficial ownership standards. Existing gaps in the US beneficial ownership framework create risks that sanctioned Russian oligarchs, money launderers, and other malign actors may continue to move assets into the United States undetected.

1. U.S. Department of Treasury, Financial Crimes Enforcement Network, April 14, 2022, “FIN-2022-A001 Advisory on Kleptocracy and Foreign Public Corruption”, <https://www.fincen.gov/sites/default/files/advisory/2022-04-14/FinCEN%20Advisory%20Corruption%20FINAL%20508.pdf>

Context

Recent US actions to counter Russian kleptocracy

1. The Treasury Department's Financial Crimes Enforcement Network (FinCEN) published three recent alerts and advisories related to the Ukraine-Russia conflict.² These public messaging efforts provide financial institutions with detailed information about how FinCEN, in consultation with the wider Treasury Department and US Government, view the risks posed by 1) Russian sanctions evasion attempts, 2) real estate, luxury goods, and other high-value assets involving Russian elites, oligarchs, and their family members, and 3) kleptocracy and foreign public corruption. The publications provide financial institutions with select red flag indicators about how Russian malign actors may seek to exploit the US and international financial systems.
2. Most recently, on April 14, 2022, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued an advisory on kleptocracy and foreign public corruption.³ This advisory laid out typologies that include descriptions of 1) wealth extraction through bribery, embezzlement, extortion, and misappropriation of public assets and 2) the process of laundering illicit proceeds such as through shell companies, offshore financial accounts, and the purchase of real estate, luxury goods, and other high-value assets. The advisory also includes ten red flag indicators to "assist financial institutions in detecting, preventing, and reporting suspicious transactions."
3. In addition to these public statements, the Biden administration announced unilateral and multilateral efforts to target the assets of kleptocrats using law enforcement and regulatory authorities. On March 2, 2022, the Justice Department Attorney General Merrick Garland publicly launched Task Force KleptoCapture, a law enforcement task force "dedicated to enforcing the sweeping sanctions, export restrictions, and economic countermeasures" against Russia, including through "asset seizures and civil forfeitures of unlawful proceeds - including personal real estate, financial, and commercial assets..."⁴ On March 16, 2022, Treasury Department Secretary Janet Yellen and Justice Department Attorney General Merrick Garland represented the United States at the launch of the Russian Elites, Proxies, and Oligarchs (REPO) multilateral task force.⁵

Broader US efforts to combat corruption

4. The fight against corruption is a core national security interest of the United States. The United States released its first "Strategy on Countering Corruption" in December 2021,⁶ after announcing a national security study memorandum on the issue in June 2021.⁷ The study specifically identified the goal to "hold accountable corrupt individuals, transnational criminal organizations, and their facilitators, including by, and where appropriate, identifying, freezing, and recovering stolen assets through increased information sharing and intelligence collection and analysis, criminal or civil enforcement actions, advisories,

2. U.S. Department of Treasury, Financial Crimes Enforcement Network, March 7, 2022, "FinCEN Alert FIN-2022-Alert001: FinCEN Advises Increased Vigilance for Potential Russian Sanctions Evasion Attempts", <https://www.fincen.gov/sites/default/files/2022-03/FinCEN%20Alert%20Russian%20Sanctions%20Evasion%20FINAL%20508.pdf>;

U.S. Department of Treasury, Financial Crimes Enforcement Network, March 16, 2022, "FinCEN Alert FIN-2022-Alert002: FinCEN Alert on Real Estate, Luxury Goods, and Other High-Value Assets Involving Russian Elites, Oligarchs, and their Family Members", https://www.fincen.gov/sites/default/files/2022-03/FinCEN%20Alert%20Russian%20Elites%20High%20Value%20Assets_508%20FINAL.pdf;

U.S. Department of Treasury, Financial Crimes Enforcement Network, April 14, 2022, "FIN-2022-A001 Advisory on Kleptocracy and Foreign Public Corruption", <https://www.fincen.gov/sites/default/files/advisory/2022-04-14/FinCEN%20Advisory%20Corruption%20FINAL%20508.pdf>

3. U.S. Department of Treasury, Financial Crimes Enforcement Network, April 14, 2022, "FIN-2022-A001 Advisory on Kleptocracy and Foreign Public Corruption", <https://www.fincen.gov/sites/default/files/advisory/2022-04-14/FinCEN%20Advisory%20Corruption%20FINAL%20508.pdf>

4. U.S. Department of Justice, March 2, 2022, "Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture", <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture>

5. U.S. Department of Treasury, March 16, 2022, "U.S. Departments of Treasury and Justice Launch Multilateral Russian Oligarch Task Force", <https://home.treasury.gov/news/press-releases/jy0659>

6. The White House, December 6, 2021, "United States Strategy on Countering Corruption", <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>

7. The White House, June 3, 2021, "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest", <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>

and sanctions or other authorities, and where possible and appropriate, returning recovered assets for the benefit of the citizens harmed by corruption.”

5. The Strategy on Countering Corruption outlines a whole-of-government approach that focuses on how to harden and protect the US and international financial systems from abuse by corrupt actors.⁸ The strategy identifies specific priority areas for the United States to address its own deficiencies, such as by 1) issuing beneficial ownership transparency regulations, 2) enacting AML/CFT regulations for real estate transactions, 3) reducing vulnerabilities from gatekeepers such as lawyers, accountants, and trust and company service providers, and 4) working multilaterally to strengthen AML regimes abroad.

Beneficial ownership reforms are underway

6. The United States continues to take steps to strengthen its beneficial ownership regime.
7. Partial beneficial ownership identification requirements remain in place for covered US financial institutions. In 2016, FinCEN finalized regulations for the Customer Due Diligence (CDD) Rule, which requires “banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities (FCM/IBs) to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. Among other things, this facilitates the identification of legal entities that may be owned or controlled by foreign [Politically Exposed Persons].”⁹
8. The National Defense Authorization Act for Fiscal Year 2021 included a substantial overhaul of the US AML regime under the Bank Secrecy Act. The Anti-Money Laundering (AML) Act of 2020 itself contained the Corporate Transparency Act (CTA), which established a federal beneficial ownership information reporting requirement for the first time. Congress intended for the federal government, through FinCEN, to collect beneficial ownership information for corporations, limited liability companies, and similar entities, to set a federal standard for incorporation practices.¹⁰ FinCEN will maintain a “secure nonpublic database” for this information.
9. To fulfill its obligations under the AML Act and CTA, FinCEN issued an Advanced Notice of Proposed Rulemaking (ANPRM) on April 5, 2021 to solicit responses from the public to a series of questions about the CTA.¹¹ Based in part on the feedback from the ANPRM, FinCEN issued a Notice of Proposed Rulemaking (NPRM) on beneficial ownership on December 7, 2021, which solicited public comment on 1) who must report beneficial ownership information, 2) when they must report, and 3) what information must be provided.¹²
10. Full implementation of the CTA’s provisions for a nonpublic beneficial ownership database may take years. In the interim, requirements like the CDD Rule and guidance from FinCEN will assist financial institutions in addressing some of the problems posed by incomplete or opaque beneficial ownership information provided by potential customers.

Focus on real estate and beneficial ownership

11. US policymakers, regulators, and law enforcement place heightened attention on risks from the real estate sector. FinCEN has taken important steps since 2016 to issue Geographic Targeting Orders (GTOs), which is a special financial intelligence collection authority, to improve oversight of the all-cash spectrum of residential real estate. These GTOs currently require “U.S. title insurance companies to identify the natural persons behind shell companies

8. The White House, December 6, 2021, “Fact Sheet: U.S. Strategy on Countering Corruption”, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/06/fact-sheet-u-s-strategy-on-countering-corruption/>

9. U.S. Department of Treasury, Financial Crimes Enforcement Network, April 14, 2022, Op. Cit.

10. U.S. Congressional Research Service, March 7, 2022, Memorandum to the House Financial Services Committee, AMLA Section-by-Section Summary and AML Deliverables Table, <https://financialservices.house.gov/uploadedfiles/hrg-117-ba00-20220428-sd003.pdf>

11. U.S. Department of Treasury, Financial Crimes Enforcement Network, April 1, 2021, “FinCEN Launches Regulatory Process for New Beneficial Ownership Reporting Requirement”, <https://www.fincen.gov/news/news-releases/fincen-launches-regulatory-process-new-beneficial-ownership-reporting>

12. U.S. Department of Treasury, Financial Crimes Enforcement Network, December 7, 2021, “FinCEN Issues Proposed Rule for Beneficial Ownership Reporting to Counter Illicit Finance and Increase Transparency”, <https://www.fincen.gov/news/news-releases/fincen-issues-proposed-rule-beneficial-ownership-reporting-counter-illicit>

used in all-cash purchases of residential real estate.”¹³ On April 29, 2022, FinCEN renewed and expanded this GTO authority to include parts of the District of Columbia, Northern Virginia, the Maryland metropolitan area, additional islands of Hawaii, and Fairfield County, Connecticut.

12. On December 6, 2021, FinCEN issued an ANPRM to solicit public comment on a potential regulatory rule about the vulnerability of the real estate sector to money laundering and other illicit finance threats.¹⁴

Continued enforcement resources

13. In addition to the Treasury Department, US law enforcement has also increased its attention on addressing kleptocrats and foreign public corruption. The Justice Department launched a Kleptocracy Asset Recovery Initiative in 2014.
14. On April 28, 2022, the Biden administration proposed an additional US\$33 billion in security, economic, and humanitarian aid that also included provisions to strengthen the Justice Department’s KleptoCapture Task Force to target high value assets from sanctioned individuals. The administration also submitted a legislative proposal to further assist law enforcement on asset forfeiture and seizure matters.¹⁵

13. U.S. Department of Treasury, Financial Crimes Enforcement Network, April 29, 2022, “FinCEN Renews and Expands Real Estate Geographic Targeting Orders”, <https://www.fincen.gov/news/news-releases/fincen-renews-and-expands-real-estate-geographic-targeting-orders>

14. U.S. Department of Treasury, Financial Crimes Enforcement Network, December 6, 2021, “FinCEN Launches Regulatory Process for New Real Estate Sector Reporting Requirements to Curb Illicit Finance”, <https://www.fincen.gov/news/news-releases/fincen-launches-regulatory-process-new-real-estate-sector-reporting-requirements>

15. The White House, April 28, 2022, “Fact Sheet: White House Calls on Congress to Provide Additional Support for Ukraine”, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/28/fact-sheet-white-house-calls-on-congress-to-provide-additional-support-for-ukraine/>

Practical Steps for Compliance

- Review the April 14, 2022, [FinCEN Advisory](#) on Kleptocracy and Foreign Public Corruption, including the ten red flag indicators, as well as the March 7, 2022, [FinCEN Alert](#) on Russian Sanctions Evasion and March 16, 2022, [FinCEN Alert](#) on High Value Assets and Russian Elites and Oligarchs.
- Periodically assess risk-based controls for due diligence obligations on “politically exposed persons”, or PEPs, identified by FinCEN as senior political figures, along with their families and associates. In particular, the March 16, 2022 [FinCEN Alert](#) on High Value Assets and Russian Elites and Oligarchs specifically identifies family members as a mechanism by which sanctioned parties may seek to move assets, and the Treasury Department’s Office of Foreign Assets Control (OFAC) has sanctioned family members of Russian officials.
- Where available, participate in voluntary private-private and public-private information sharing such as through USA PATRIOT Act [Section 314\(b\)](#) and [FinCEN Exchange](#).
- For those covered financial institutions subject to the Customer Due Diligence (CDD) Rule, ensure that controls identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions.
- Contribute to public comment processes to inform forthcoming rulemakings on beneficial ownership, real estate, and other topics that implicate compliance functions.

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