

## RESOLVING TO FIGHT CORRUPTION: FINCEN'S LATEST CORRUPTION ADVISORY FOR FINANCIAL INSTITUTIONS

On April 14, 2022, The Financial Crimes Enforcement Network ("FinCEN") released an Advisory<sup>1</sup>, available [here](#), urging financial institutions to prioritize detecting proceeds of foreign corruption and reporting related suspicious financial activity. The Advisory provides typologies highlighting examples of bribery, extortion, misappropriation and embezzlement by corrupt officials and potential "red flag" indicators of foreign public corruption that financial institutions should focus on to strengthen their anti-corruption efforts within their existing risk-based anti-money laundering ("AML") compliance programs. It also reminds financial institutions of their reporting requirements under the Bank Secrecy Act and USA PATRIOT Act.

Broadly, this Advisory is the latest part of a larger push by the Biden Administration to counter corruption, pursuant to its "United States Strategy on Countering Corruption," available [here](#). We have previously written about the Administration's anti-corruption strategy [here](#). This Advisory is also in line with recent sanctions efforts by the Administration following Russia's invasion of Ukraine in February 2022.

### EMPHASIS ON RUSSIAN KLEPTOCRACY

The Advisory heightens prioritization of anti-corruption efforts with an obvious, but not singular, focus on Russia. The Advisory highlights that Russia is of particular concern because of the "nexus [there] between corruption, money laundering, malign influence and armed interventions abroad and sanctions evasion." Given the recent invasion of Ukraine and the significant sanctions that have been

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<sup>1</sup> Though advisories are not law, there is nonetheless an expectation that they are reviewed by financial institutions and that the advisories inform compliance best practices for financial institutions.

imposed on the Russian government, businesses and individuals, financial institutions should pay particular attention to transactions that may have ties to Russia, including through its government, businesses, and individuals.

## **LAUNDERING CORRUPT PROCEEDS THROUGH LUXURY ASSETS AND REAL ESTATE**

The Advisory also highlights the critical role that financial institutions play in anti-corruption efforts, in particular regarding impeding foreign actors from laundering the proceeds of corruption. We note that the discussion of use of luxury assets also highlights the role of industries that are not regulated to the same degree as banks regarding AML internal compliance and reporting requirements. For example, sellers of luxury goods, regulated or not, have reputational risk and potential sanctions risk, if they do not focus on AML and sanctions safeguards. This is because high-value assets that maintain value over time are of particular interest to those seeking to launder the proceeds of corruption.

Similarly, certain types of transactions, in particular real estate transactions, are a favored avenue for laundering and storing corrupt proceeds. FinCEN's focus on real estate transactions is consistent with the Administration's outlined priorities in its Strategy on Countering Corruption and ongoing FinCEN rulemaking. To that end, FinCEN's Advisory warns that financial institutions should be cautious of the use of shell companies and layered transactions to disguise illicit sources of funds.

## **ATTENTION TO BENEFICIAL OWNERSHIP**

The Advisory also addresses the Administration's strategic objective to address deficiencies in the AML regime by noting that FinCEN has taken steps to curb the use of shell companies in part by taking first steps to implement a beneficial ownership database pursuant to the Corporate Transparency Act, enacted in 2020. The Advisory points financial institutions to the role of shell companies in concealing the origin of proceeds of corruption. In particular, the Advisory suggests that financial institutions should be cautious of shell companies and offshore accounts established in foreign jurisdictions that limit transparency into ownership but provide for opportunities to launder funds through investments and acquisitions.

## **THE KLEPTOCRACY ASSET REWARD PROGRAM**

The Advisory also emphasizes Treasury's [Kleptocracy Asset Discovery Rewards Program](#), which rewards whistleblowers with up to \$5 million for information leading to the seizure of assets linked to foreign corruption. The Kleptocracy Asset Reward Program is not limited to U.S. persons, so citizens of other countries who possess information on assets linked to foreign corruption can benefit from the whistleblower incentives and may have their identities protected. This program increases the likelihood that kleptocrats may be exposed and face civil and criminal penalties. Following from that likelihood, those who do business with kleptocrats, knowingly or unknowingly, similarly may be exposed in the process, and face increased reputational and sanctions risk.

## **TAKEAWAYS**

Overall, the Advisory supports the Administration's strategic objectives by increasing information available to the private sector to detect and expose

corruption and re-emphasizing it as a priority. It also supports the Administration's goal to engage other governments and entities outside of the United States in the pursuit of curbing corruption. To this end, the Advisory includes several factual details with a global audience in mind, including people in Russia.

Financial institutions should be aware of the potentially heightened risks in jurisdictions that have become favored destinations for travel and investments from corrupt officials, especially with respect to such places that have not imposed sanctions on Russia or in connection with kleptocracy more generally. Financial institutions should pay particular attention to understanding ultimate beneficial ownership, funding from offshore accounts with limited transparency, and purchases of high value assets (particularly by foreign public officials or those associated with them) to limit this risk.

Combined with FinCEN's earlier statements specifically referencing corruption as a priority AML concern, the advisory provides a signal as to where financial institutions should expect increased compliance scrutiny and potential enforcement actions. Financial institutions, including those that have not historically had minimum AML compliance and reporting requirements, may also expect increasing transparency requirements indirectly as a result of the compliance concerns of the financial institutions providing them with services as the Administration's anti-corruption efforts continue to escalate.

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