

FinCEN Issues Advisory on Kleptocracy and Foreign Public Corruption

April 20, 2022

INTRODUCTION

On April 14, 2022, the Financial Crimes Enforcement Network (“FinCEN”) released its “Advisory on Kleptocracy and Foreign Public Corruption” (the “Advisory”), directing covered financial institutions to focus their efforts on identifying the proceeds of foreign public corruption, which is a priority for the Biden administration.¹ The Advisory focuses on so-called “kleptocrats,” defined as individuals who use “their position and influence to enrich themselves and their networks of corrupt actors,” as well as other corrupt public officials who may launder the proceeds of their corruption through financial institutions.

Last summer, the Biden administration elevated foreign public corruption to a “core national security priority” of the United States. Subsequently, in December 2021, the administration rolled out its government-wide “U.S. Strategy on Countering Corruption,”² which directed various branches of the U.S. government to redouble their efforts to combat public corruption.³ Additionally, in March 2022, the U.S. Department of the Treasury (“Treasury”) implemented the new Kleptocracy Asset Recovery Rewards Program, which offers rewards to qualified individuals who provide information leading to the seizure or forfeiture of stolen assets linked to foreign public corruption, as mandated by the 2021 National Defense Authorization Act (“NDAA”).⁴

The new Advisory issued by FinCEN focuses on wealth extraction and money laundering as two key typologies of kleptocracy and foreign public corruption. FinCEN also identified ten red flags implicating potential kleptocracy and foreign public corruption, which may trigger suspicious activity reporting (“SAR”) requirements.

¹ See FinCEN Advisory, FIN-2022-A001: Advisory on Kleptocracy and Foreign Public Corruption (Apr. 14, 2022), available [here](#).

² White House, United States Strategy on Countering Corruption (Dec. 2021), available [here](#).

³ See also our previous Debevoise In Depth, President Biden Declares the Fight Against Corruption a National Security Priority and Directs Federal Agencies To Enhance Enforcement (Jun. 07, 2021), available [here](#).

⁴ Treasury. Kleptocracy Asset Recovery Rewards Program (Dec. 2021), available [here](#).

The Advisory describes Russia as being “of particular concern.” This focus on Russia and Russian officials follows efforts by the U.S. Treasury and Justice Departments, along with their peers in allied governments, to address Russian kleptocracy concerns through coordinated sanctions enforcement, asset freezes and seizures, including of vessels owned by so-called Russian oligarchs, and other similar actions in the wake of the conflict in Ukraine.⁵

TYPOLOGIES OF KLEPTOCRACY AND FOREIGN PUBLIC CORRUPTION

The Advisory outlines two typologies of kleptocracy and foreign public corruption: “wealth extraction” and the “laundering of illicit proceeds.”

“Wealth extraction” may take place in the form of:

- *Bribery and Extortion.* The Advisory explains bribery schemes, which often involve payments to foreign government officials by persons or entities in order to obtain or retain business, or for other benefits. Companies or individuals may also be coerced or extorted by public officials to pay bribes. Bribes can sometimes be made through third-party facilitators or laundered through a network of shell companies or other entities. Financial accounts into which, or from which, bribes are deposited or withdrawn are often based outside of the recipient’s home country.
- *Misappropriation or Embezzlement of Public Assets.* The Advisory defines misappropriation or embezzlement of public assets as “broadly encompass[ing] the theft, diversion, or misuse of public funds or research for personal benefit or enrichment.” Public officials may deceive corporations, including financial institutions, into redirecting government resources for their own benefit. Certain sectors—including defense, health, infrastructure and development—are identified as potentially presenting a particularly high risk of this type of corruption and subsequent money laundering.

According to the Advisory, the “laundering of illicit proceeds” may take place in the form of:

- *Shell Companies and Offshore Financial Accounts.* Corrupt actors may use shell companies to obscure illicit funds or leverage associates to create shell companies and accounts on these actors’ accounts. Customer due diligence regulations require

⁵ DOJ Press Release, U.S. Departments of Justice and Treasury Launch Multilateral Russian Oligarch Task Force, available [here](#); DOJ Press Release, Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture, available [here](#).

certain financial institutions to identify and verify the identity of the beneficial owners of companies that open new accounts.⁶ FinCEN also has proposed additional beneficial ownership information reporting requirements pursuant to the Corporate Transparency Act, which was enacted as part of the Anti-Money Laundering Act of 2020.⁷

- *Purchase of Real Estate, Luxury Goods and Other High-Value Assets.* Parties involved in bribery and corruption often purchase various U.S. assets—such as luxury real estate, private jets and yachts, and artwork—to launder the proceeds of their illicit activities, sometimes utilizing shell companies or straw purchasers. FinCEN has previously issued Geographic Targeting Orders in several real estate markets, requiring additional diligence on all-cash purchases of valuable real estate.

FINANCIAL RED FLAG INDICATORS

A covered financial institution is required to file a SAR if it knows, or has reason to suspect, that a transaction conducted or attempted at the financial institution involves funds derived from illicit activity or the use of the financial institution to facilitate illicit activity, among other situations. The Advisory identified the following ten red flags indicating potential involvement of kleptocracy or foreign public corruption in a transaction, the presence of which may trigger SAR filing requirements:

- *Contracts.* Transactions involving long-term government contracts that are awarded through opaque selection processes to the same legal entity or entities with similar beneficial ownership structures.
- *State-Owned Businesses.* Transactions involving services to state-owned companies or public institutions by entities in high-risk jurisdictions.
- *Embassy Activities.* Transactions involving official foreign government business conducted through personal accounts.
- *Source of Wealth.* Transactions involving public officials that are inconsistent with officially reported wealth or that fall outside of their usual lifestyles, such as those involving luxury goods or real estate.

⁶ 81 Fed. Reg. 29398 (2016).

⁷ 86 Fed. Reg. 69920 (2021). See our previous Debevoise In Depths, *FinCEN Proposes Beneficial Ownership Reporting Rule*, available [here](#); *Congress Passes Sweeping Anti-Money Laundering and Corporate Beneficial Ownership Law*, available [here](#).

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- Lack of Business Purpose. Transactions involving public officials and the transfer of funds involving countries with which these officials do not appear to have ties.
 - Agents. Transactions involving the use of third parties to shield the identity of foreign public officials.
 - Contract Mark-ups and Insufficient Documentation. Transactions involving documents such as invoices that corroborate charges at prices well above market rates, include overly simple documentation, or lack traditional details (e.g., prices).
 - Missing Documentation. Transactions involving payments that do not match the amounts in the underlying documentation, vague payment details or the use of old or fraudulent documentation.
 - Fraud. Transactions involving false email addresses or false invoices to justify payments.
 - Shell Companies. Transactions involving assets held by intermediate legal entities with beneficial owners tied to kleptocrats or associated individuals.

The Biden administration is devoting considerable resources to combatting foreign corruption and kleptocracy, and the Advisory places significant expectations on covered U.S. financial institutions to ensure their AML programs include risk-based controls to identify and report customer activity that is potentially indicative of foreign corruption.

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Please do not hesitate to contact us with any questions.

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