Cooley

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On 12 July 2022, the UK's National Crime Agency (NCA) and the Office of Financial Sanctions Implementation (OFSI) published a red alert report on some of the common techniques used by Russian sanctioned persons to evade financial sanctions in the UK. The red alert supports the current heightened scrutiny of the UK government's sanctions regime, and it is designed to encourage public and private sector cooperation on sanctions compliance.

Context

The UK government's sanctions regime has designated many of the elites who control Russia's economic interests and have had some sort of involvement in the support of the war in Ukraine. Some of these designated persons (DPs) have employed a range of techniques to circumvent sanctions and prevent them from impacting their personal and commercial holdings in the UK. DPs do this by using associates, such as family members and close contacts, via enablers to transfer assets to trusted proxies, sell or transfer assets at a loss to realise their value before sanctions take effect, and divest investments to ensure ownership stakes are below the 50% threshold.

The NCA and OFSI red alert aims to set out key indicators and examples of the types of techniques commonly used by DPs, and what activities and behaviour to look out for. Whilst the red alert is focused largely on guidance to professional firms, it is of wider value, and corporates should take note of it when assessing sanctions risks.

Sanctions indicators

The alert highlights 34 indicators or 'red flags' indicating that a DP could be trying to evade financial sanctions, including:

- Changes of beneficial ownership of a DP's corporate structure to non-Russian family members or associates.
- Movement of assets previously associated with a DP, where funds are then disbursed offshore through secrecy jurisdictions.
- Use of trust arrangements or complex corporate structures involving offshore companies to hide the DP's ownership interest.
- Transfers of ownership to previously unknown individuals whose economic consumption, displays of wealth or financial footprint do not correspond with their newly reported wealth.
- DPs using pooled accounts in which banks see only the name of the enabler and not the client.
- Use of banks and financial organisations owned by close associates of DPs.
- Evidence of suspicious consulting invoices at non-market rates.
- The appointment of a nominee director to manage the assets of the company, as well as obfuscation of beneficial ownership through the use of nominee shareholders and a deed of trust between the parties where the DP claims to have divested the asset.
- Numerous transfers of shares from sanctioned entities to non-sanctioned entities involving corporates incorporated by the same people and company.
- Holding companies based in jurisdictions that are offshore and/or historically linked to assets in the former Soviet Union.
- Transactions by holding companies linked to DPs with Swiss bank accounts, as well as British Virgin Islands or Cypriot legal persons.
- Payments received by UK businesses, often in innovative areas such as fintechs, owned in part by Russian nationals and/or others implicated in previous major trade-based money laundering schemes.

The red alert states that, where a firm identifies activity which falls under indicators detailed in the alert, and the firm falls under the regulated sector, it should make a suspicious activity report (SAR) before the NCA. A SAR is an information report alerting law enforcement that certain client or customer activity is suspicious and might indicate money laundering or terrorist financing.

Even where activity does not constitute a SAR, firms are encouraged to report any relevant information.

Industry recommendations

The red alert also provides six recommendations to assist businesses in identifying possible financial sanctions evasion and in calculating business and customer risks:

1. Arms-length transactions must be documented and should not be taken at face value by firms, particularly when assessing indirect control that a DP may exert over the entity.
2. A failure to undertake appropriate due diligence should be considered a red flag for complicity and breach/circumvention offences.
3. Firms should carefully assess complex corporate structures and the commercial justification for them as part of enhanced due diligence for high-risk clients.
4. Firms should note that issues of aggregation of ownership can be further complicated where differing approaches to it are applied across the European Union, UK and US, and more than one owner seeks to divest their shareholding.
5. Firms should conduct enhanced due diligence and follow up with the competent authority if they come across documentation purporting to present a change of ownership by a company linked to a DP.
6. In instances where companies have provided legal assessments regarding the transfer of ownership, firms should carry out their own legal assessments to come to an independent determination.

If you have questions on EU and UK sanctions – and how they may affect you and your business – please reach out to any of the Cooley lawyers listed below.

Cooley trainee solicitor Victoria Barlow also contributed to this alert.

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