



# “Fireside Chat” – Dealing with Russia in the Current Geopolitical Environment

PRESENTATION HIGH-LIGHTS

FOR

CENTER FOR INTERNATIONAL LEGAL STUDIES (CILS)

BAD GASTEIN, AUSTRIA

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# Introduction

- How to Deal with (or Leave) Russia – Practice Pointers
  - Leaving Russia - a “REXIT” Roadmap
  - Managing the Exit
    - U.S. Sanctions / Russian Federation Counter-sanctions
  - Money Laundering
    - Federal & State Money Transmitter Laws
    - Recent U.S. Legislation (Corporate Transparency Act)
  - Safeguards & Compliance

# Managing the EXIT - Avoiding Sanctions Violations

- U.S. Sanctions –
  - Enforced by U.S. Treasury Department
  - Office of Foreign Asset Control (OFAC)
    - <https://ofac.treasury.gov>
    - Making it Unlawful to deal with entities on the OFAC Sanctions List”
      - <https://sanctionssearch.ofac.treas.gov>
      - Civil penalties (Up to Millions of U.S. Dollars)
      - Criminal Penalties (Up to 30 years’ imprisonment)

# Managing the EXIT - Avoiding Sanctions Violations

- Investment /Services to Russia Prohibited
  - U.S. Executive Order (EO) 14071
  - Certain Exceptions: But Require OFAC Licenses
    - Takes up to 6 months; No guarantee of approval
- Sanctions Diligence
  - Is counter-party to transaction in Russia on the OFAC Sanctions List?
- If so, requires OFAC License
- Alternative: (Non-binding) Informal OFAC Opinion

# Managing the Exit Russian Counter-Sanctions

- Russian Countersanctions /Response to Western Sanctions
  - Asset nationalization / Confiscation
    - Presidential Decree No.302 (April 25, 2023)
  - “REXIT Tax”
    - Presidential Decree No. 618 (Sept. 8, 2022)
      - Subsequent Guidance, March 27, 2023
  - Requiring payment of “contribution” (a/k/a “exit tax”) by unfriendly companies leaving Russia
  - 5 – 10 % of FMV of exiting company
  - Special Committee review (typically) required

# Managing the Exit

## Russian Counter-Sanctions

- Other Russian Counter-Sanctions
  - Replacement of Directors in Russian companies owned or controlled by “unfriendly” entities or company
  - Criminal penalties for “tax violations” by unfriendly companies
  - Licensing restrictions on asset transfers out of Russia
  - Restrictions on financial transfers between Russian entities and those of “unfriendly states”

# Managing the Exit Russian Counter-Sanctions

- REXIT “Catch 22”
  - Presidential Decree No. 618 Requires REXIT Tax/ Special Committee Approval
    - Failure to pay is Violation of Russian Law
  - But REXIT Tax payment not permitted under U.S Law
    - Payment of “ordinary and incidental tax” permitted
    - But payment of REXIT Tax is not
      - Requires OFAC License – Uncertainty/Delay
      - Otherwise violation of U.S. Sanctions

# MONEY LAUNDERING

## U.S. Money Laundering Laws

- Federal –
  - Involves disguising financial assets obtained from illegal activities of proceeds
  - Requires “predicate” act (Unlawful purpose /Illegally obtained money)
  - Bank Secrecy Act (BSA)
    - Enforced by Treasury Department
    - FINCEN (Financial Crimes Enforcement Network)
    - Violations Referred to U.S. Justice Department)



# MONEY LAUNDERING

## U.S. Money Laundering Laws

- Bank Secrecy Act (31 U.S.C. 5311)
- Requires Banks to:
  - Establish anti-money laundering (AML) programs
  - Issue Suspicious Activity Report (“SAR”) for “Red Flags” (warning signs) in financial activity
- Money service businesses (MSB) must obtain federal or state transmitter license(s)
- Failure to obtain license can be “predicate” for money laundering violation

# CORPORATE TRANSPARENCY ACT

## Corporate Transparency Act (CTA)

- Anti-Money Laundering Act of 2020
  - 2021 National Defense Authorization Act
  - U.S.C. Title 31 Section 5536
- Requires All U.S. Businesses with Exceptions (“Reporting Companies”) to file “Beneficial Owner Information” to FinCEN
  - Includes both Domestic and Foreign Companies that are created or registered in the U.S.
  - Purpose is to “crack down on anonymous shell companies” engaged in money laundering and other crimes

# CORPORATE TRANSPARENCY ACT

## Corporate Transparency Act (CTA)

- Will affect an estimated 33 million small businesses
  - Exemptions e.g. for large (publicly traded) companies
- Filing Deadlines
  - For established companies, by Dec. 31, 2024
  - For new companies,
    - Within 90 days of formation (after 2024)
    - Within 30 days (after 2024)
- Filed BOI to be stored in BOI Database

# CORPORATE TRANSPARENCY ACT

## Corporate Transparency Act (CTA)

- BOI filed with FinCEN to be stored in BOI Database
  - Available to U.S. Federal Law Enforcement agencies
  - & to Banks (with customer consent)
- Implications for Financial Transactions
  - Banks will require BOI Consent as part of “KYC”
  - Client refusal could trigger SAR under Bank Secrecy Act
  - Expect Banks & Other lenders to modify loan documents

# Safeguards & Compliance

- CTA Legislative Purpose – Anti-Money Laundering
- Reporting Companies with Russian, Ukrainian or other Suspicious Beneficial Owners likely to trigger scrutiny
- Safeguards: Review Corporate Ownership
  - Supported by Representations & Covenants re: CTA Compliance in Shareholder or Other Equity Holder Agreements.
  - Review Loan documents (debt financing, 3rd party call rights)
  - Include other “controlling persons” (secured lenders, contract counterparties)

# Safeguards & Compliance

ALL THIS STUFF IS VERY COMPLICATED

( & Becoming More So )

SO DO NOT TRY IT AT HOME

Instead

CALL YOUR LAWYER!



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Walt Saprnov has represented corporate clients in telecom transactions, regulation and privacy for over thirty years. He has been named in Georgia Super Lawyers and in the International Who's Who of Telecom Lawyers. Saprnov & Associates represents domestic and foreign clients in complex commercial transactions, cross-border finance, and international dispute resolution.

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