ATTORNEY ADVERTISING

**SAPRONOV & ASSOCIATES, P.C.**
**ATTORNEYS AT LAW**

**info@wstelecomlaw.com**
**www.wstelecomlaw.com**

**1300 I STREET, NW, SUITE 400**
**WASHINGTON, D.C. 20005**
**TEL. 770.309.0462**

**5555 GLENRIDGE CONNECTOR SUITE 200**
**ATLANTA, GEORGIA 30342**
**TEL. 770.399.9100**

# Foreign Investment Alert[1]

**February 22, 2025**

## Negotiable Hostilities - Part V:[2]
## REXIT & Its Repercussions - Criminal and Other Implications


[1] While accurate to the best of our knowledge, this discussion is for tutorial purposes only and is neither a legal opinion nor legal advice. Please contact us if you have any questions regarding this disclaimer.

[2] For prior alerts in our "Negotiable Hostilities" Series, please visit https://wstelecomlaw.com/2023/08/negotiable-hostilities-webinars/.

## I. INTRODUCTION

As the seemingly unending Ukrainian Conflict continues, Western and U.S. businesses leaving Russia or in the process (one we term "REXIT") must deal with sanctions and other laws affecting the transfer of money and other assets from Russia to the West.

Simply stated, Russian authorities seek to prevent Western companies (and their money) from leaving; Western authorities scrutinize those who do. Reputational risk is also a factor: remaining in Russia can be toxic – both in terms of public perception and increased Western government scrutiny of their dealings with the West. Nor does that end for those Russian, Ukrainian, and other Eastern European expatriates[3] who do find a way to emigrate and must continue to deal with Western sanctions. They, along with other expatriates having Eastern European connections, must deal with increased scrutiny of their cross-border financial transfers under increasingly strict money transfer laws. REXIT, in short, brings risks of not just financial loss, but also potential criminal penalties.

How to accomplish this REXIT (and mitigating these risks) is the subject of this alert. We examine the impact of the Ukrainian conflict on companies wishing - or forced – to leave Russia, how to accomplish this, and the aforementioned risks of doing so. We also examine how crossing the shifting lines between what is or is not legal in the U.S. and/or Russia, can create a catch-22: U.S. compliance can trigger Russian law violations, and vice-versa. Worse still, such violations can lead to criminal penalties on both sides.[4]

Finally, we review how U.S. money laundering enforcement has been expanded under recently enacted legislation, the Corporate Transparency Act, a development of special importance for the Eastern European diaspora in the West.

## III. NAVIGATING A WAY OUT OF RUSSIA

### A. REXIT Risks

Among those imposed by the Russian Federation are the confiscation of "unfriendly" companies' assets by Russian authorities, a REXIT tax (discussed below), Russian criminal enforcement for failing to pay taxes, and restrictions on financial transfers between Russia and the West.

Among the Western ones are confiscation by Western authorities (*e.g.*, oligarch assets), sanctions for paying the REXIT tax, restrictions on financial transfers from sanctioned Russian banks, and potential money laundering implications – especially following the recent enactment of the Corporate Transparency Act (discussed below).

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[3] Given the historical intermingling between Russian, Ukrainian, and other citizenry of countries in the former Soviet Union (Commonwealth of Independent States ("CIS")), Western money laundering and other governmental scrutiny discussed in this alert may well apply to other Eastern European expatriates as well. *See*, *e.g.*, https://www.icij.org/inside-icij/2021/03/u-s-sanctions-ukrainian-oligarch-featured-in-fincen-files-investigation

[4] A future alert and accompanying webinar will examine criminal risks for Western companies choosing to stay in Russia.

Administrative compliance involves lengthy procedures both in Russia (special committee approval) and in the U.S. (OFAC licensing). Thus, there is no speedy REXIT for businesses leaving Russia. In our experience, the process can take at least a year and probably longer.

Here are a few of these obstacles on both sides of this East-West divide.

### B. OFAC Licensing and Sanctions Diligence

The U.S. Sanctions program has targeted hundreds of entities, business sectors, and assets that have "contributed to the situation in Ukraine," (see www.ofac.treasury.gov). Authorized by a series of U.S. Presidential Executive Orders,[5] the program makes it unlawful to deal with entities on the OFAC sanctions list (https://ofac.treasury.gov). Violations can trigger both civil penalties of up to millions of U.S. dollars and criminal ones of up to 30 years imprisonment.

So before moving financial assets out of Russia (or attempting to do so), the first step should begin with "Sanctions Diligence": a thorough review of all entities involved in the transaction to confirm whether they are on the sanctions list (https://sanctionssearch.ofac.treas.gov/

Many if not most Russian banking institutions (Sberbank, VTB Bank, Alfa-Bank) are on the sanctions list. OFAC compliance when dealing with sanctioned entities requires a license to do so, a process that can take six months or longer, with no guarantee of success. Even if the parties to the transaction are not on the sanctions list, that can change - and frequently does. Further, there could be indirect involvement of sanctioned entities that do not appear on the initial review. Accordingly, in an abundance of caution, it is probably advisable to seek an informal "no-sanctions violation" opinion from OFAC for any such financial transfer.

Still another complication involves payment of Russian taxes. While payment of "ordinary and incidental" taxes in Russia by U.S. citizens is permissible[6], payment of the Russian REXIT "contribution" is not: it is deemed by OFAC to be in support of the Ukrainian conflict and thus requires a license from OFAC to do so. This creates a "Catch 22": paying the REXIT without an OFAC license is a violation of U.S. law; not paying is a violation of Russian law.[7]

Finally, our experience is that the most effective U.S. sanctions are those voluntarily imposed by Western Banks. None, to our knowledge, will exchange funds with Russian banks (whether sanctioned or not).

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[5] For a general overview on Russian Sanctions, see our Investment Alert at https://wstelecomlaw.com/wpcontent/uploads/2020/02/Foreign-Investment-AlertDoing-Business-inRussia_b.pdf. and, more recently, https://wstelecomlaw.com/2023/08/negotiable-hostilities-webinars

[6] Cite .

[7] For a more detailed discussion of this "Catch 22", please see our recent presentation at the Center for International Legal Studies (CILS), "Challenges to Legal Services in A Changing World, https://wstelecomlaw.com/2024/01/cils-fireside-chat/

### C. Money Laundering and the Corporate Transparency Act.

Money laundering, essentially, is the disguise of financial assets obtained from illegal activities (or from their proceeds). A money laundering conviction requires a "predicate act" - an unlawful purpose or illegal transmission of money. The controlling federal statute is the Bank Secrecy Act (31 U.S.C. 5311), enforced by FinCEN (Financial Crimes Enforcement Network), an agency of the U.S. Treasury Department, as authorized under Title III of the Patriot Act. Importantly, the Bank Secrecy Act requires banks and other financial institutions to establish "know your customer" (KYC) and other anti-money laundering (AML) programs. Designed to detect suspicious financial activity, AML requires banks to issue a "Suspicious Activity Report" (SAR) when seeing "red flags" or warning signs of such possible activity. Moreover, there are both federal and state laws requiring money service businesses to obtain federal or state money "transmitter" licenses.[8] Failure to do so when transmitting international funds can be a predicate act for a money laundering violation.

Importantly, the FinCEN money laundering net has been greatly expanded by the recently effective Corporate Transparency Act (CTA).

The CTA[9] requires all small business entities (so-called "reporting companies") to disclose their "beneficial owners". A "company applicant" who makes the filing on behalf of the Reporting Company (*e.g.*, its attorneys) is also required to disclose its identity. The legislation is expected to affect some 32 million small businesses in the U.S. Essentially, the CTA is designed to identify individuals (including Eastern European sanctions evaders) who use corporate "shells" to conceal their ownership. The information is to be stored in a beneficial owner information (BOI) database. Failure to comply with the CTA can trigger substantial civil penalties of up to $10,000, and up to two years of imprisonment. Unauthorized use or disclosure of BOI can trigger up to $250,000 in fines and up to five years' imprisonment.

As for financial transactions, while Banks are exempt from CTA reporting, they may well modify their standard loan documents to require consent to a borrower's BOI disclosure. Failure or refusal to grant such consent may well trigger a SAR under the BSA. Banks can also be expected to modify their loan covenants to ensure their borrowers' CTA compliance.

Finally, as the CTA's legislative purpose includes identifying Russian oligarchs or others assisting the "illegal invasion of Ukraine",[10] it is not unreasonable to conclude that Russian, Ukrainian, and other Eastern European borrowers may well see increased scrutiny when conducting future loan transactions.

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[8] See *e.g.*, O.C.G.A. 7-1-701 (2010) (Licensure or registration; written application)

Title 7, Section 7-1-100 et. seq.

[9] For our synopsis of the CTA, please see https://wstelecomlaw.com/2024/01/corporate-transparency-act-cta-a-synopsis/.

[10] https://home.treasury.gov/news/press-releases/jy1974

The subject of this alert will be discussed at a future webinar. For now, if you have any questions or comments – or need assistance with CTA filings, please contact us at info@wstelecomlaw.com, wsapronov@wstelecomlaw.com or at (770) 309-0462. Meanwhile, we continue to pray for peace between Russia and Ukraine.