Seyfarth

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FinCEN Issues Multiple Real Estate Related Alerts to Financial Institutions to be Vigilant Against Efforts to Evade US Imposed Sanctions

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On March 3rd, 2022, we published an article entitled *The Effect of US Sanctions Against Russia on Commercial Real Estate Documentation* (the "Seyfarth Article") that discussed a number of different ways US persons in real estate can undertake due diligence to help ensure that they do not engage in transactions with blocked companies and persons under OFAC's recently expanded rules.

As a follow up to the above article, we thought it would be useful to highlight two recent Financial Crimes Enforcement Network ("FinCEN") alerts:

> (1) alerting financial institutions to be vigilant against efforts to evade US sanctions against Russia (https://www.fincen.gov/sites/default/files/2022-03/FinCEN%20Alert%20Russian%20Sanctions%20Evasion%20FINAL%20508.pdf) and
>
> (2) alerting financial institutions on the importance of identifying suspicious transactions involving, among other things, real estate (https://www.fincen.gov/sites/default/files/2022-03/FinCEN%20Alert%20Russian%20Elites%20High%20Value%20Assets_508%20FINAL.pdf

FinCEN is a bureau of the US Department of the Treasury whose mission is to safeguard the US financial system from illicit use and to combat money laundering and to promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

On March 7, 2022, FinCEN alerted all financial institutions to be vigilant against efforts to evade the US imposed sanctions implemented in connection with Russia's invasion of Ukraine. As a result of the sanctions discussed in the Seyfarth Article, FinCEN warns that sanctioned individuals (in particular Russians and Belarusians) may seek to evade sanctions through various means, including through non-sanctioned Russian and Belarusian financial institutions and financial institutions in other countries. FinCEN pointed out several potential red flag indicators to consider:

(1) the use of corporate vehicles to obscure

(i) ownership,

(ii) source of funds, or

(iii) countries involved, particularly sanctioned jurisdictions,

(2) the use of shell companies to conduct international wire transfers,

(3) the use of third parties to shield the identity of sanctioned persons seeking to hide the origin or ownership of funds,

(4) accounts in jurisdictions or with financial institutions that are experiencing a sudden rise in value being transferred to their respective areas or institutions,

(5) jurisdictions previously associated with Russian financial flows that are identified as having a notable recent increase in new company formations,

(6) newly established accounts that attempt to send or receive funds from a sanctioned institution or an institution removed from SWIFT, and

(7) non-routine foreign exchange transactions that may indirectly involve sanctioned Russian financial institutions.

On March 16, 2022, FinCEN issued a second alert specifically with respect to the real estate industry, noting that sanctioned Russians may seek to evade sanctions through the purchase and sale of commercial or high-end residential real estate. According to the alert, real estate lends itself to storing wealth due to its high value, potential for appreciation, and use of layered transactions which could potentially hide a property's ultimate beneficial owner. FinCEN warns that sanctioned Russians may purchase or maintain real estate through shell companies or trusts, or may liquidate real estate owned in countries that have imposed sanctions on Russian individuals. FinCEN notes several red flags for the real estate industry to consider:

> (1) the purchase, sale, donation, or legal ownership transfer of high-value real estate in the name of a foreign legal entity, shell company, or trust,
>
> (2) the use of legal entities or arrangements that may have a connection to sanctioned Russian individuals to hide the ultimate beneficiary or the origins or source of the funds,
>
> (3) changes to the transaction patterns of a firm located in a country other than the US, Russia, Belarus, and Ukraine, where the new transactions involve convertible virtual currency and Russian-related investments or firms,
>
> (4) if a Russian individual or entity requests a wire transfer from a non-US (particularly non-Russian) bank to pay for an all-cash purchase,
>
> (5) the dilution of equitable interest held in real property by sanctioned Russian individuals, by the addition of, or the transfer of real estate to, an individual not affiliated with the buyer or seller, and
>
> (6) the maintenance, purchase, or termination of real estate insurance by persons with a known connection to sanctioned Russian individuals.

FinCEN's issuance of two alerts within a period of two weeks that identify the potential for evasion of sanctions by Russian individuals highlights the need for parties to real estate transactions to conduct diligence concerning the exact identity of a party with which one is transacting (including the beneficial owners of such party), so as to not inadvertently breach an OFAC representation made in real estate documents or reporting obligations required by FinCEN. As discussed in the March 3rd Seyfarth Article, transacting with a party on an OFAC list can lead to criminal or administrative penalties, in addition to possible defaults under real estate documents that could have serious ramifications, such as a termination of lease, termination of property management services, JV buyout rights, a cash trap trigger, or foreclosure. All parties to real estate transactions should keep the above evasion tactics in mind when conducting due diligence to ensure that they do not engage in transactions with blocked companies and persons under the recently expanded OFAC rules.

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