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Client Alert

Special Matters & Government Investigations

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Recent OFAC and DOJ Activity Signals Potential New Era of Control-Based Sanctions Enforcement

INTRODUCTION[i]

U.S. sanctions enforcement is evolving to adopt a "control" analysis similar to the analysis employed by the European Union and United Kingdom based on a recent major enforcement action by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and parallel arguments from the Department of Justice ("DOJ"). Specifically, U.S. enforcement authorities have recently taken the position that even when an entity has less than 50 percent ownership by a Specially Designated National ("SDN"), that entity may still be treated as a blocked person if the SDN nevertheless exerts control or influence over the entity. This signals a potential turning point for companies and their counsel who have for years relied on OFAC's guidance in FAQ 398 that the "50 Percent Rule speaks only to ownership and not to control" and have evaluated whether entities are considered blocked persons based solely on SDN equity ownership.[ii] The recent positions taken by OFAC and DOJ breathe life into FAQ 398's caution against engaging in transactions with entities which "blocked persons may control by means other than a majority ownership interest."

On June 12, 2025, OFAC imposed a $215,988,868 penalty on GVA Capital Ltd. ("GVA"), a California-based venture capital firm, for violating OFAC's Ukraine-/Russia-related sanctions by managing U.S. investments for a sanctioned Russian oligarch.[iii] This penalty, which reflects the statutory maximum based on OFAC's Enforcement Guidelines, constitutes the largest penalty ever imposed by OFAC on a non-bank financial institution for violations of U.S. sanctions. In its enforcement release, OFAC dismissed a narrow, technical reading of its 50 Percent Rule, focusing instead on GVA's actual knowledge that the oligarch retained a beneficial interest in and exerted control over the assets. OFAC cautioned that this action "demonstrates the risk that U.S.

persons face when relying on formalistic ownership arrangements that obscure the true parties in interest behind an entity or investment, without sufficiently considering factors such as control or influence over that investment."

This approach mirrors arguments recently made by the DOJ in a separate criminal case, suggesting a convergence between the long-standing "control" tests used in the European Union and the United Kingdom, and it carries important lessons for corporate compliance programs across the financial services industry and beyond.[iv] Indeed, earlier this year, OFAC designated a number of companies located in various jurisdictions around the world pursuant to Executive Orders 14024 and 13662 for "being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly," sanctioned parties.[v] As the U.S. government appears to be pursuing a more substantive, control-based analysis to determine whether an entity is effectively owned or controlled by, or acting on behalf of, a sanctioned party, companies should reevaluate whether they can continue to rely on a formalistic application of OFAC's 50 Percent Rule. In light of these developments, companies should evaluate existing sanctions controls already in place and consider the need to evaluate and augment those controls to reflect OFAC's and DOJ's priorities, as explained further below.

OFAC ENFORCEMENT ACTION AGAINST GVA CAPITAL

The GVA enforcement action stemmed from the firm's management of a $20 million investment in a U.S. technology company on behalf of Russian oligarch Suleiman Kerimov.[vi] GVA's senior management had direct dealings with Kerimov to secure the investment before his designation. After Kerimov was added to the SDN List in April 2018, GVA continued to manage the investment, dealing with Kerimov's nephew, who according to OFAC, GVA knew was acting as Kerimov's proxy. The investment was made through Prosperity Investments, L.P., a Guernsey-based entity in which Kerimov retained an interest after his designation through the Delaware-based Heritage Trust.

Notably, GVA Capital obtained a legal opinion after Kerimov was sanctioned that concluded that the investment vehicle, Prosperity Investments, was not itself blocked because it was not *nominally* owned 50 percent or more by an SDN. OFAC's enforcement release declares that this formalistic legal opinion regarding the blocked status of Prosperity Investments was incorrect – and, in fact, further demonstrated GVA's consciousness of its own liability. OFAC ultimately determined that the case was "egregious" based on the following aggravating factors demonstrating GVA's willfulness:

- **Actual Knowledge:** GVA's senior management had "actual knowledge" that the funds ultimately came from Kerimov and that he "retained a property interest in that investment."
- **Ignoring a Warning:** The legal opinion GVA received, while incorrectly concluding the entity was not blocked, still explicitly "cautioned GVA Capital that any sale or transfer of the shares could not directly or indirectly involve Kerimov." GVA nevertheless continued to deal with Kerimov's known proxy.
- **Focus on the Underlying Reality:** OFAC determined that Kerimov did, in fact, retain a property interest in Prosperity Investments through another entity, Heritage Trust. OFAC explicitly warned against relying on "formalistic ownership arrangements that obscure the true parties in interest behind an entity or investment without sufficiently considering factors such as control or influence."

The GVA enforcement action signals that OFAC will look through complex legal structures to the underlying reality of who benefits from and, ultimately, who *controls* an asset. As demonstrated by this enforcement action, having knowledge of control by, and continuing to provide services to, a sanctioned party through proxy structures or intermediary arrangements creates substantial sanctions exposure.

DOJ PROSECUTION ARGUMENTS IN *UNITED STATES V. OSIPOV*

OFAC's position in the GVA enforcement action echoes recent arguments made by DOJ's National Security Division in the ongoing prosecution of Vladislav Osipov.[vii] Osipov, a Russian national who led a family office in Switzerland, was initially indicted in October 2022—with a superseding indictment in January 2024—for sanctions violations, money laundering, and bank fraud in connection with the operation of the luxury yacht owned by sanctioned Russian oligarch Viktor Vekselberg. According to the indictment, Osipov and others allegedly changed the ownership structure of the TANGO to bring Vekselberg's ownership share of the holding company under 50 percent and thus conceal from financial institutions Vekselberg's continued control of the yacht. DOJ alleges that, "at all relevant times, [Osipov] knew that [Vekselberg] was the true beneficial owner of TANGO and that TANGO was being operated solely for the exclusive use of [Vekselberg], his family, and his friends."[viii]

In his April 30, 2024 motion to dismiss the indictment, Osipov argued that the TANGO became unblocked when Vekselberg transferred his legal ownership of the yacht. Osipov argued that OFAC's public guidance, including FAQ 398, states that the 50 Percent Rule is about *ownership*, not control, and that transactions with entities owned less than 50 percent by an SDN are not prohibited.[ix] In response, DOJ countered that the 50 Percent Rule is neither a "safe harbor" nor should it be considered an exclusive test for whether property is automatically blocked.[x] DOJ noted that FAQ 398 also urges caution when dealing with a non-blocked entity in which a blocked person has a significant ownership interest less than 50 percent as "such non-blocked entities may become the subject of future designation." DOJ made clear its view that focusing entirely on ownership with regard to the 50 Percent Rule, as the sole determinant of a potential violation, would "defy all common sense," as it would allow any SDN to "operate through an intermediary or a shell company of which he legally owns less than 50 percent, and thereby avoid any of the law's restrictions."[xi] The GVA enforcement action reinforces that DOJ's position regarding the application of the 50 Percent Rule is shared by OFAC.

IMPLICATIONS

Although the second Trump administration has yet to make a policy statement concerning its sanctions enforcement priorities, OFAC's recent GVA Capital enforcement action and DOJ's ongoing arguments in the *Osipov* matter demonstrate the U.S. government's continued focus on financial gatekeepers and an increasing willingness to go beyond bright-line ownership rules. These actions bring the United States closer in line with the European Union and United Kingdom sanctions regimes, which have long required a highly fact-specific assessment involving criteria of legal or practical "control" that go well beyond any direct or indirect equity ownership interest held in an entity (e.g., by having the right to appoint or remove the majority of the board of directors of an entity, holding the majority of the voting rights in an entity, or exercising a dominant influence over an entity). This convergence signals a move toward a more harmonized—yet more demanding—global standard for sanctions compliance, where a substance-over-form analysis will be expected by relevant sanctions authorities across key jurisdictions.

PRACTICAL RECOMMENDATIONS

In light of the evolving sanctions compliance landscape, companies across industry sectors should consider reassessing their compliance programs in the following ways:

- **Go Beyond the 50 Percent Rule**: Compliance programs should not stop at merely checking ownership percentages and should instead be designed to identify other indicia of control, including, for example:
    - The presence of an SDN's family members or close associates in positions of management.
    - Complex or opaque ownership structures (e.g., multiple intermediary entities) that appear designed to obscure the ultimate beneficial owner.

    - Share transfers after an SDN's designation that include provisions which preserve the SDN's interest or involve the appointment of a proxy of the SDN to exercise control over an entity's operations or assets.
    - The source of funds underlying the investment of monies and assets under management.

- **Scrutinize External Legal Opinions**: As the GVA case aptly demonstrates, reliance on a legal opinion that takes a narrow, formalistic view of the 50 Percent Rule can be a critical error, particularly when an institution possesses facts suggesting that a sanctioned person retains control or a beneficial interest. External legal opinions should explicitly consider and analyze the risks of *de facto* control, and lawyers must fully develop the factual context to achieve a defensible legal opinion.
- **Update Training:** Relationship managers, deal teams, and investment professionals—*not just the compliance department*—must be trained to spot and escalate red flags related to proxy ownership and *de facto* control. As GVA's senior management demonstrated, their knowledge can be imputed to the firm, making them the critical first line of defense.
- **Consider Re-Evaluating Existing Relationships**: Take proactive steps to implement compliance and controls consistent with existing risk profiles. Review client and counterparty relationships, particularly those connected to high-risk jurisdictions or individuals. Any entity with a known, non-controlling ownership interest held by an SDN, or where an SDN is suspected of having significant influence, warrants a fresh and deeper risk assessment. Procedures or "guardrails" should also be put in place for cases when an existing investor becomes sanctioned in order to prevent or mitigate the possibility of any violations of sanctions laws.

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[i] The authors would like to thank summer associate Catherine Kirby for her invaluable assistance with this client alert.

[ii] *FAQ 398: Entities Owned by Blocked Persons (50% Rule)*, OFF. OF FOREIGN ASSETS CONTROL (Aug. 11, 2020), https://ofac.treasury.gov/faqs/398.

[iii] *OFAC Imposes $215,988,868 Penalty on GVA Capital Ltd. For Violating Ukraine/Russia-Related Sanctions and Reporting Obligations*, OFF. OF FOREIGN ASSETS CONTROL (June 12, 2025), https://ofac.treasury.gov/media/934366/download?inline.

[iv] *Restrictive Measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures 11623/24*, COUNCIL OF THE EUROPEAN UNION-GENERAL SECRETARIAT OF THE COUNCIL (July 3, 2024), https://data.consilium.europa.eu/doc/document/ST-11623-2024-INIT/en/pdf; *Ownership and Control: Public Officials and Control Guidance,* U.K. OFF. OF FIN. SANCTIONS IMPLEMENTATION (Aug. 20, 2024) https://www.gov.uk/government/publications/ownership-and-control-public-officials-and-control-guidance/ownership-and-control-public-officials-and-control-guidance#:~:text=As%20set%20out%20in%20UK,voting%20rights%20in%20that%20entity.

[v] *Treasury Intensifies Sanctions Against Russia by Targeting Russia's Oil Production and Exports,* OFF. OF FOREIGN ASSETS CONTROL (Jan. 10, 2025), https://home.treasury.gov/news/press-releases/jy2777.

[vi] *OFAC Imposes $215,988,868 Penalty on GVA Capital Ltd. For Violating Ukraine/Russia-Related Sanctions and Reporting Obligations*, OFF. OF FOREIGN ASSETS CONTROL (June 12, 2025), https://ofac.treasury.gov/media/934366/download?inline.

[vii] *See* DOJ, *Bank Fraud Charges Added to Indictment Against Swiss Businessman in Connection to Russian Oligarch's Superyacht* (Feb. 22, 2024), https://www.justice.gov/usao-dc/pr/bank-fraud-charges-added-indictment-against-swiss-businessman-connection-russian; Government's Opposition to Defendant's Motion to Dismiss the Superseding Indictment (ECF No. 30), *United States v. Osipov*, No. 1:22-cr-00369 (D.D.C. May 14, 2024).

[viii] Superseding Indictment (ECF No. 19), ¶ 22, *United States v. Osipov*, No. 22-cr-369 (D.D.C. Jan. 30, 2024).

[ix] Motion to Dismiss (ECF No. 29), at 2-3, *United States v. Osipov*, No. 22-cr-369 (D.D.C. Apr. 30, 2024).

[x] Memorandum in Opposition (ECF No. 30), at 13-15, *United States v. Osipov*, No. 22-cr-369 (D.D.C. May 14, 2024).

[xi] *Id.* at 17-18.

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