

Major OFAC Penalty for US Venture Capital Fund – Key Takeaways

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Investment funds and other financial institutions should learn lessons from this case, including the risk of dealing with intermediaries.

On June 12, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) [imposed](#) a civil penalty of approximately \$216 million on GVA Capital Ltd., a venture capital firm based in San Francisco, for violations of OFAC's Russia regulations and failing to fully comply with a subpoena. This is a rare instance of OFAC imposing its statutory maximum civil penalty, and signals the high compliance expectations that OFAC has of "gatekeepers" like investment funds and other financial institutions.

Background

GVA was accused of managing an investment for Suleiman Kerimov while aware that he was sanctioned by OFAC. Kerimov is a prominent Russian businessman who was sanctioned in 2018. The GVA investment was initiated before Kerimov was sanctioned, but OFAC accused GVA of continuing to manage it after the sanctions by working with Kerimov's nephew, while allegedly aware that he "served as Kerimov's proxy."

In 2016, before Kerimov was sanctioned, GVA's senior management met him in person to discuss an opportunity to invest in an early-stage U.S. company. The GVA team got positive feedback and were told to discuss the details with Kerimov's nephew, Ruslan Gadzhiyev. Kerimov then made a \$20 million investment in the U.S. company backed by GVA, with the funds coming from a Guernsey-based entity. There was [press reporting](#) in 2022 about such an investment in Luminar Technologies, and [additional reporting](#) in 2023 about another such investment in a former Catholic church property that was to become a GVA-backed incubator called the "Startup Temple."

At the time of the investment, there were no applicable sanctions. Kerimov was sanctioned by OFAC two years later, in 2018, and Gadzhiyev in 2022. After OFAC sanctioned Kerimov in 2018, GVA got a legal opinion, which OFAC, remarkably, said "concluded incorrectly" that the Guernsey entity that had made the investment "was not itself" subject to sanctions "because it was not nominally owned 50 percent or more by a person on the SDN List." OFAC seemed to hint that among the shortcomings with the legal opinion was an inadequate exploration of the entity's links to Kerimov. OFAC's sanctions can apply quite broadly when a "blocked" person like Kerimov has any "interest of any nature whatsoever, direct or indirect," in an asset like this U.S. company's shares.

OFAC stated cryptically that in April 2021 it somehow "learned" of an upcoming transfer of shares in the U.S. company and conducted an investigation. OFAC determined that the shares were owned by Heritage Trust, a

Delaware trust. Then, in 2022, OFAC [issued](#) a rare Notification of Blocked Property to Heritage Trust, stating publicly that this trust held over \$1 billion in assets that were connected to Kerimov.

OFAC could have learned of this planned share transfer and the potential sanctions connection in a variety of ways, including reporting by any one of the numerous financial institutions that presumably would have been involved. OFAC may have also learned about it from the litigation that apparently the parties were engaged in about the value of the interest in the U.S. company. OFAC did indicate that it was tracking that litigation.

OFAC determined that, after the sanctions were imposed on Kerimov in 2018, GVA continued to manage transactions by entities owned by Heritage Trust involving this U.S. company's shares. GVA had a "formal" line of communication with the trust's U.S.-based fiduciary and an "informal" line to Kerimov's nephew, Gadzhiyev. OFAC found that GVA knew of Kerimov's interest, with Gadzhiyev acting as his representative. On this basis, OFAC determined that GVA violated the sanctions applicable to Kerimov.

As part of the investigation, OFAC issued an administrative subpoena to GVA in June 2021, and GVA provided approximately 173 documents in response. Then, over two years later, after OFAC issued a pre-penalty notice to GVA, it suddenly produced another 1,300 or so documents to OFAC that it said were also responsive to the subpoena. OFAC found this 28-month delay in the full subpoena response to constitute 28 separate violations of its reporting regulations, which were in addition to the violations of the sanctions applicable to Kerimov. OFAC's Enforcement Guidelines state that additional penalties "may be imposed each month that a party has continued to fail to comply with the requirement to furnish information."

Key Takeaways

Investment funds and others should take away the following key lessons from this case:

- Shell games typically don't work in OFAC's world. Dealing with an intermediary, nominee, offshore company, complex trust structure, etc. often won't provide any protection if an OFAC sanctions target is behind the scenes and information about that ultimate beneficiary is available. OFAC is not afraid to dig deeply into the facts and impose devastating penalties when it finds a violation, particularly when the agency deems the conduct to be "egregious," as it did here.
- An opinion from outside counsel won't necessarily help if it's not based on a thorough exploration of the facts and a clear understanding of the nuances of OFAC's regulations.
- If you get an OFAC subpoena, don't play games with partial responses – provide a robust and well-vetted response the first time.

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