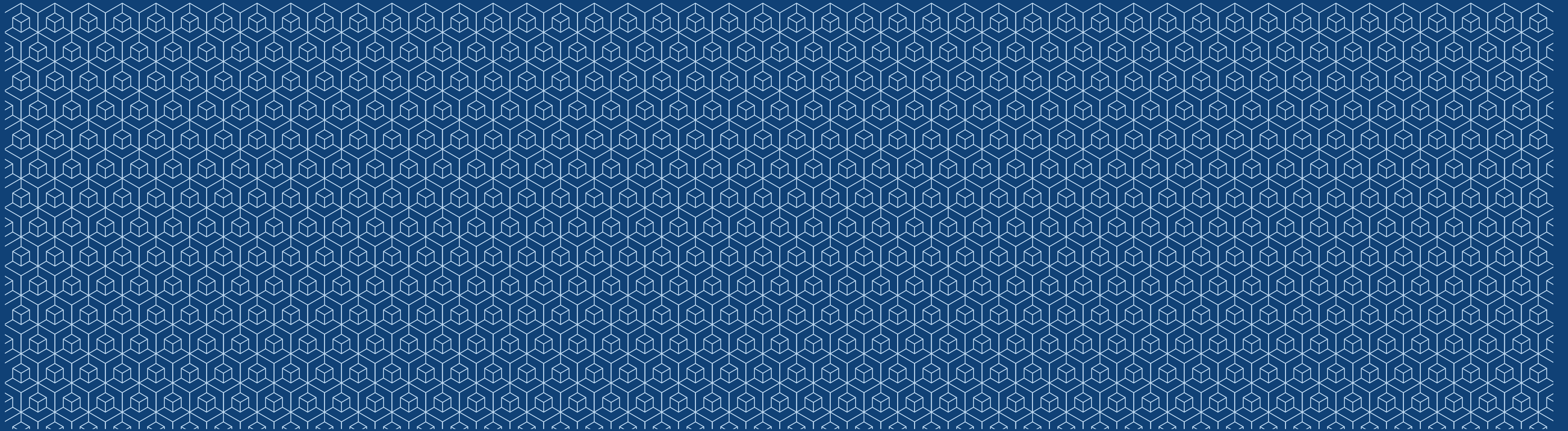


Kyiv Arbitration Days 2022

Enforcement: Property of sanctioned Russian oligarchs

James Hayton, Principal



Oligarchs



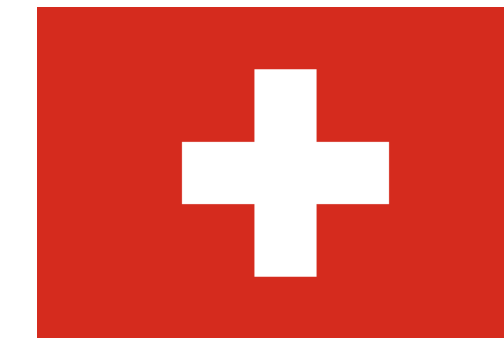
HOW MANY NATURAL PERSONS ARE SUBJECT TO ASSET FREEZES?



242



546



1,211



1,418



1,424

Number of individuals (overlapping and not necessarily 'oligarchs') sanctioned by selected countries' sanctions regimes as of today.

Source: EU, Swiss, UK and US sanctions lists, October 2022

Oligarchs

LK

WHY ARE THEY SANCTIONED?

The common thread:

“...undermining or threatening the territorial integrity, sovereignty and independence of Ukraine...”

Some potentially interesting additional grounds:

- ▶ **Canada:** Persons involved in gross and systematic human rights violations
- ▶ **UK:** Persons obtaining a benefit from or supporting the Government of Russia

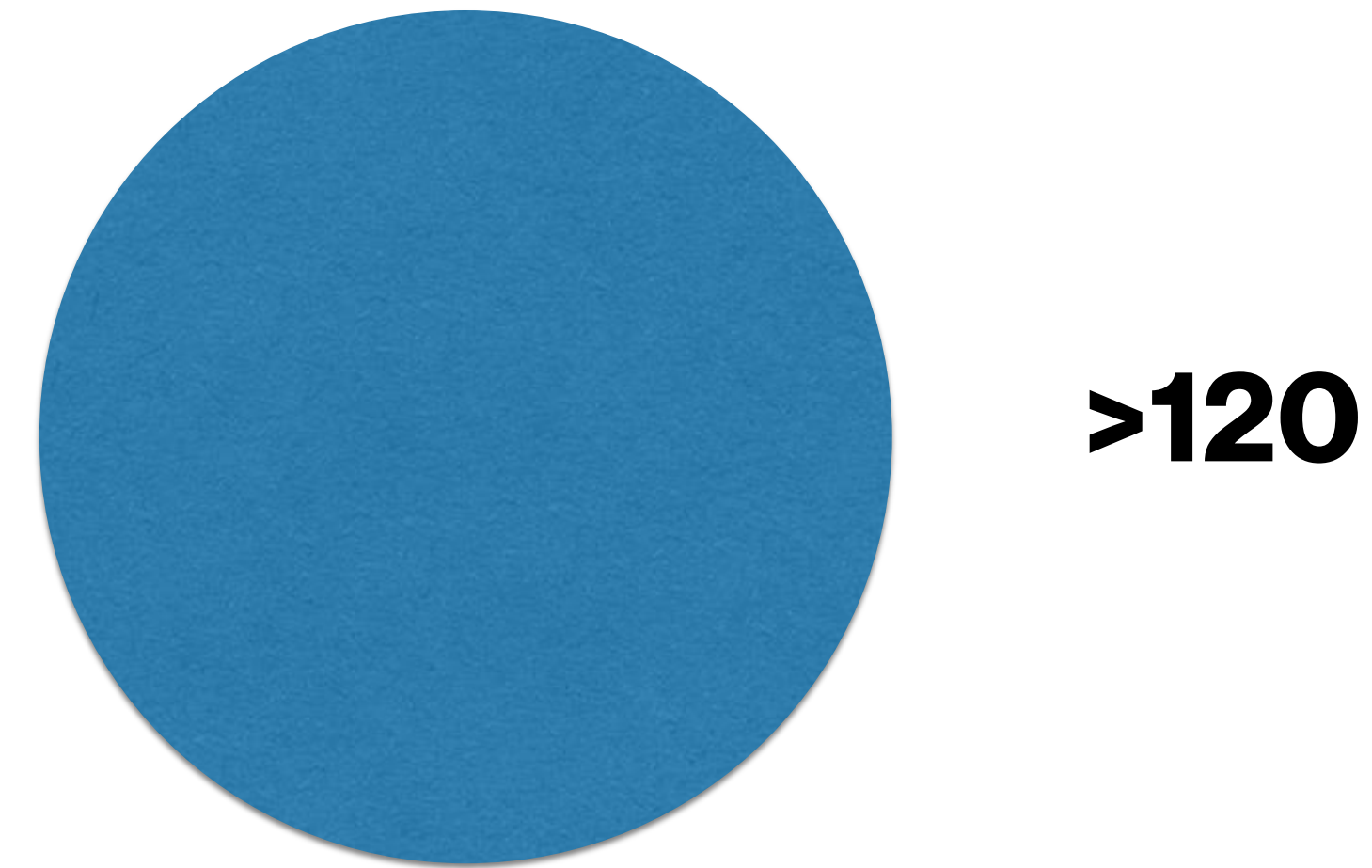
Oligarchs

HOW MANY OF THE SANCTIONED INDIVIDUALS ARE OLIGARCHS?



Early Putin era /
pre-‘Grand Bargain’ (2003)

Source: Guriev & Rachinsky, ‘The Role of Oligarchs in Russian Capitalism’, *Journal of Economic Perspectives*, Vol. 19, No.1 (Winter 2005), pp.131-150



“a Russian national who is both ultra-high-net-worth and connected to the Putin regime” (2022)

UK Foreign, Commonwealth & Development Office press release (2 November 2022), relying on *Forbes*

Oligarchs' Assets



WHAT IS THERE?

> **US\$ 30 billion**

Value of assets frozen by the members of the Russian Elites, Proxies and Oligarchs (**REPO**) Task Force (Australia, Canada, European Commission, France, Germany, Japan, Italy, UK and US)

Source: US Dept. of Justice, March 2022

Physical Assets

WHAT IS THERE?

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5 Belgrave Square & Mews, London

Estimated value: £50m

Alleged UBO: Oleg Deripaska

Restriction entered on the proprietorship register in August 2022 at HM Land Registry prohibiting dealings with the estate other than with the consent of OFSI, the UK sanctions authority

Source: HM Land Registry

Physical Assets

WHAT IS THERE?



Amadea 348ft

Estimated value: US\$300m

Alleged UBO: Suleyman Kerimov

Seized in Fiji pursuant to a US warrant in May 2022 and taken to US territory

Source: US DoJ

Physical Assets

WHAT IS THERE?



Boeing 787 Dreamliner

Estimated value: US\$350m

Alleged UBO: Roman Abramovich

Seized in Dubai in June 2022 pursuant to a US warrant

Source: US DoJ

Financial Assets

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WHAT IS THERE?

c. US\$ 7 billion

Value of assets frozen by The Royal Court of Jersey on 12 April 2022 suspected to be connected to Mr Abramovich, either located in Jersey or owned by Jersey-incorporated entities

Source: Law Officers' Department of Jersey, April 2022

Oligarchs' Assets



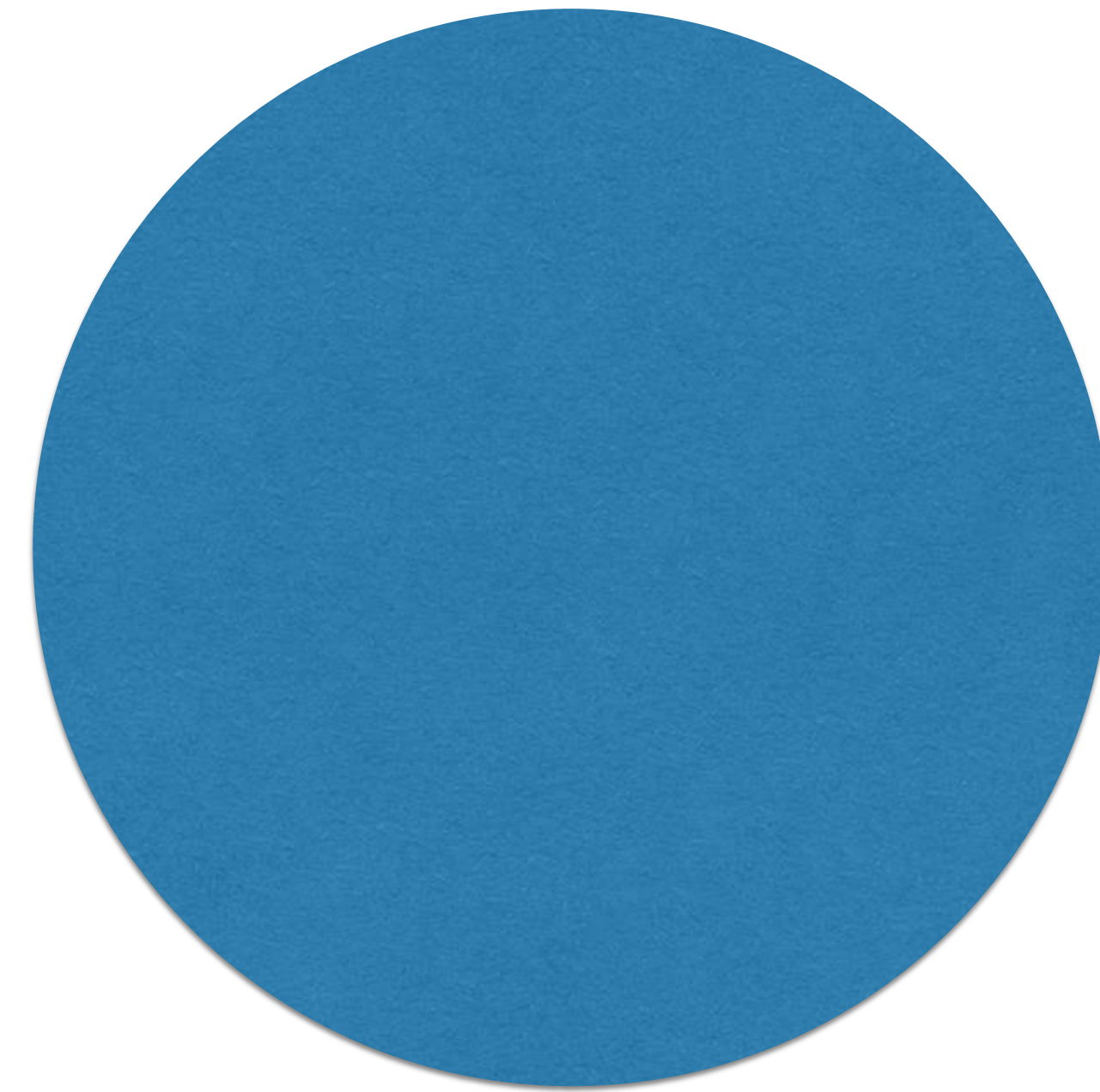
WHAT IS THERE?



> US\$ 30 billion

Value of assets frozen by the members of the Russian Elites, Proxies and Oligarchs (**REPO**) Task Force

Source: US Dept. of Justice, March 2022



c. US\$ 200 billion

Estimated value of Russian assets held by Swiss banks

Source: Swiss Bankers Association, 18 March 2022

Enforcement against Oligarchs' assets

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PRIVATE ENFORCEMENT

As the law stands, it would be very difficult:

- ▶ *Alter ego*, à la Louis XIV? « *L'État, c'est moi* » (*I am the State*). Almost certainly not.
- ▶ The property is beneficially owned by the State and is merely being held by the oligarch on its behalf. That will be a great challenge in most cases:

« Le secret des grandes fortunes sans cause apparente est un crime oublié, parce qu'il a été proprement fait. »
[The secret behind great fortunes without apparent cause is a forgotten crime, because it was properly done.]

Balzac *La Père Goriot* (1834)

- ▶ 1990s crimes?
- ▶ More recent but “properly done” transfers?

Enforcement against Oligarchs' assets

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PRIVATE ENFORCEMENT

Third-Party Debt Orders / Garnishee orders?

If the oligarch owes the Russian Federation a debt, then it might be possible to obtain a 'garnishee' order against him requiring him to pay that debt to the award/judgment-creditor, rather than to the Russian State.

For example, perhaps a tax debt?

If pursued to its logical conclusion, this could lead to quite strange consequences?

Enforcement against Oligarchs' assets

LK

GOVERNMENT-LED ENFORCEMENT?

There are existing national forfeiture regimes, but they are not a quick and easy road.

For example, the UK's **Proceeds of Crime Act 2002** enables national authorities (not private individuals) to apply for:

- ▶ a forfeiture order: shown (on the balance of probabilities) by the applicant that the property was obtained through criminal conduct (possibly foreign conduct)
- ▶ unexplained wealth order: respondent (e.g. oligarch) must explain to court his interest in the property or face further enforcement proceedings in which the burden shifts to him to prove the property was lawfully obtained or lose it

The proceeds will probably not, in any event, end up in an award- or judgment-creditor's pocket unless it can show that it is a victim of the crime by which the property was obtained.

Enforcement against Oligarchs' assets

LK

The End ... or is it?

Oligarchs

POTENTIAL LAW REFORM

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April 2022 White House proposals to Congress

- ▶ 'streamlined administrative process to seize and forfeit oligarch assets' provided that such assets have a 'connection to specified unlawful conduct', such decisions to be reviewable by a court on an expedited basis;
- ▶ a new criminal offence of 'knowingly or intentionally possessing proceeds directly obtained from corrupt dealings with the Russian government'

Oligarchs



POTENTIAL LAW REFORM

October 2022 proposals from some Senators

Amendments to the latest Defense Authorization Bill:

- ▶ Create a new administrative forfeiture procedure that allows seizure of property that is derived from proceeds '*relating to terrorism or other illegal acts*', subject to judicial review, including a right to appeal;
- ▶ Authorize proceeds from forfeited property to be used to provide humanitarian assistance to Ukraine

Oligarchs

LK

POTENTIAL LAW REFORM

The general attitude in 'the West' currently therefore appears to be that:

- ▶ Forfeiture should be administrative in name but **subject to the review of a court** (perhaps hoping that Russians will not appear to contest the proceedings, for fear of engaging US jurisdiction more generally)
- ▶ There needs to be a **link between the property and some unlawful conduct**, e.g. sanctions evasions or historical corruption (these are probably more widespread than direct assistance with Russia's invasion of Ukraine and its prosecution of the war there)

Oligarchs

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POTENTIAL LAW REFORM

There are a number of reasons why that is the prevailing view:

- ▶ The long 'peace' following the Second World War has entrenched notions of personal property rights which are hard to dislodge (now enshrined as a 'qualified right' under A1P1 of the ECHR). Depriving oligarchs of their property could lead to claims to the Strasbourg Court.
- ▶ Although one might view US seizure of assets amid the 1979 Iran hostage crisis as a precedent, that related to Iranian state assets rather than privately owned property.
- ▶ Not since the First and Second World Wars have there been measures to deprive persons of their property in similar circumstances without having to prove wrongdoing (e.g. the US and UK's various 'Trading with the Enemy' Acts). In those cases, the UK and US were directly at war with the enemy powers.

Thank you

