

Managing sanctions and export control risks

- in the context of today's geopolitical environment

Attorney-at-law Thomas Brandi

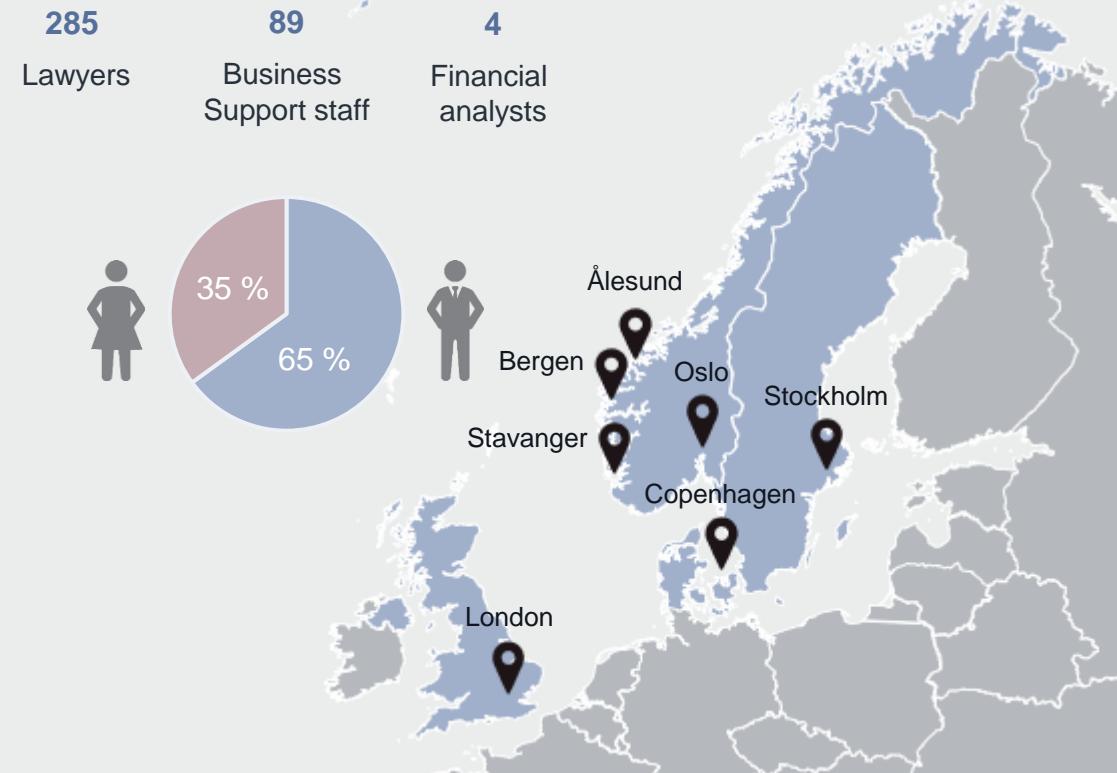
FSi Export Control Seminar 3-4 April 2024

Schjødt – a Nordic law firm with a global practise

Schjødt is the only full-service law firm that can deliver seamless legal services through integrated practice areas across Scandinavia and the United Kingdom.

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- ▶ Internationally oriented compliance and investigations practice with extensive experience from cross-border assignments.
- ▶ A Tier 1 white-collar crime and litigation practice, including Supreme Court admitted attorneys.
- ▶ A unique global network of compliance experts and white-collar crime lawyers (www.conciliumglobal.net).

380 resources and 7 offices across the Nordics and the UK



RISK CONTEXT

Trends

Navigating ESG/compliance risks have become more complex in a rapid changing geopolitical and regulatory environment

► Companies have an increasing need for effective Compliance Programs and Third-Party Risk Management processes

Regulatory requirements

- EU directives and regulations
- Anti-corruption laws
- Anti-money laundering and KYC
- Anti-trust
- Economic sanctions and export controls
- Human rights and supply chain
- GDPR
- Foreign direct investment control

Geopolitical developments

- War in Ukraine
- Delays in supply chain
- Macroeconomic developments (inflation, interest rates, etc.)
- Market volatility

Stakeholder expectations

- Stronger consumer focus on sustainability
- Responsible business conduct in focus for many stakeholders, including investors, banks, employees, NGOs and society
- Zero tolerance for sanctions breaches
- Increased enforcement focus by authorities

Trade Compliance and circumvention of sanctions on the agenda

Russland-sanksjonene

Norskproduserte varer i Russland: – Sannsynlig at noe av det er tiltenkt militæret

Maritimt utstyr fra Norge har endt opp i Russland. Mye er beregnet for fiskeriflåten, tror orlogskaptein Tor Ivar Strømmen. – Men det meste er også utstyr som det russiske forsvaret vil ha behov for.



E24 Norge's største næringslivsavis

Børn Akejelve Tips oss! Etabonment Meny

Russland-sanksjonene

PST: Daglige forsøk på å omgå sanksjonene mot Russland

PST, Etterretningstjenesten og Tolletaten ser at Russland prøver å få tak i vestlig teknologi og varer ved å sende dem til eller via tredjeland rundt Russland.

“Sanctions Are The New FCPA”: DOJ Increases Focus on Sanctions and Export Control Enforcement

Regjeringen vil lage ny etat for eksportkontroll og sanksjoner

Årsaken er en enorm økning i henvendelser fra næringslivet til departementet, sier utenriksminister Anniken Huitfeldt (Ap).



Hentet offshoreutstyr i Rogaland – dro rett til St. Petersburg

I ny vurdering mener PST i Sør-Vest å kjenne til at det pågår fiendtlig og ulovlig etterretningsvirksomhet både i Stavanger og Haugesund.



Mari Rollag Evensen
Journalist
Elise Pedersen
Journalist
Simon Elias Bogen
Journalist
Gisle Jørgensen
Journalist
Erik Waage
Fotograf

Vi rapporterer fra Stavanger
Publisert 10. nov. kl. 12:33
Oppdatert 10. nov. kl. 15:39

Politiet i Risavika havn i en annen sammenheng. PST har ikke opplyst hvilken havn i Rogaland det er snakk om.

FOTO: MATHIAS OPPEDAL / NRK

Risk navigation based on sanctions' maps is not sufficient (alone)

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News

Press Release

Departments of Justice, Commerce and Treasury Issue Joint Compliance Note on Russia-Related Sanctions Evasion and Export Controls

Thursday, March 2, 2023

Share

The U.S. Department of Commerce's Bureau of Industry and Security (BIS), the Treasury's Office of Foreign Asset Control (OFAC), and the Department of Justice's Office of Inspector General (OIG) issued a joint compliance note on the use of third-party intermediaries to evade Russian- and Belarusian-related sanctions. This is the first collective effort by the three agencies to inform the public of the risks of sanctions evasion and provide guidance to the business community on how to comply with export laws. The three agencies will issue these...

European Commission

Guidance for EU operators:

Implementing enhanced due diligence to shield against Russia sanctions circumvention

EU Sanctions Map Last update 11.10.2023

EU Sanctions Whistleblower Tool

Consolidated List of Travel Bans

Competent authorities

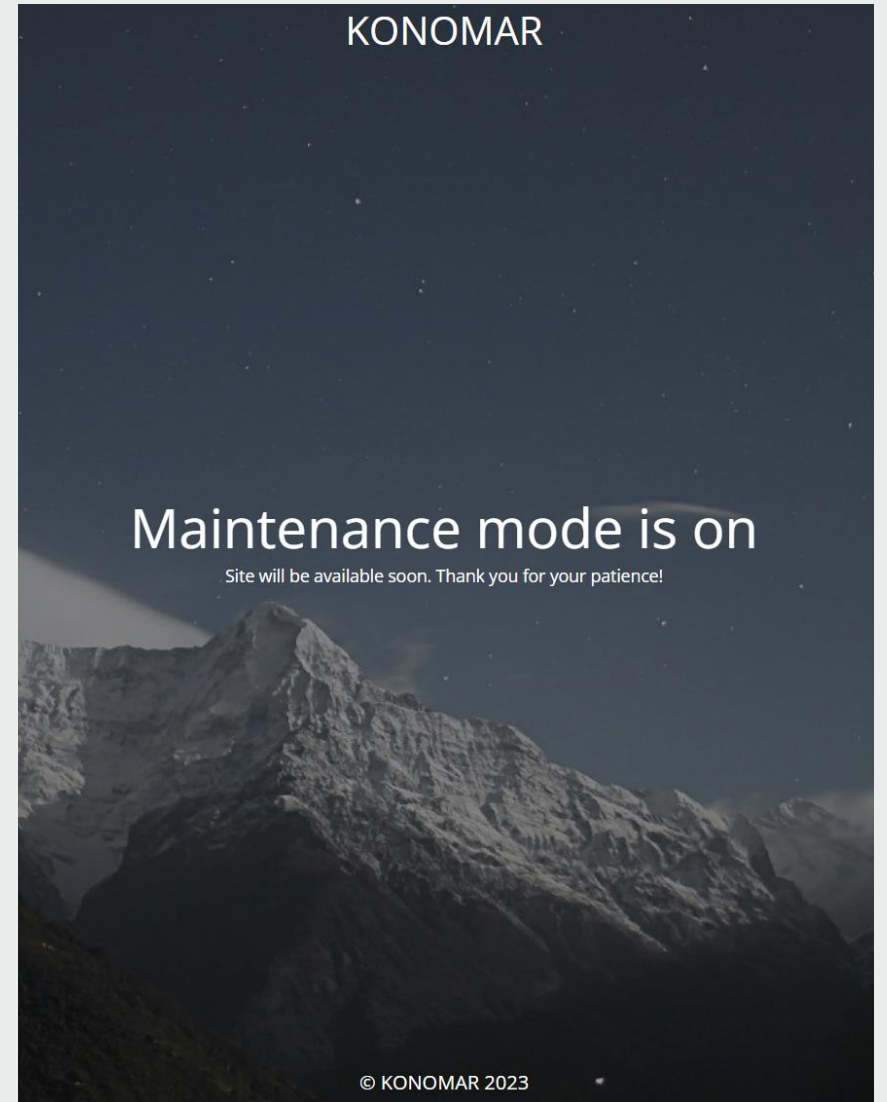
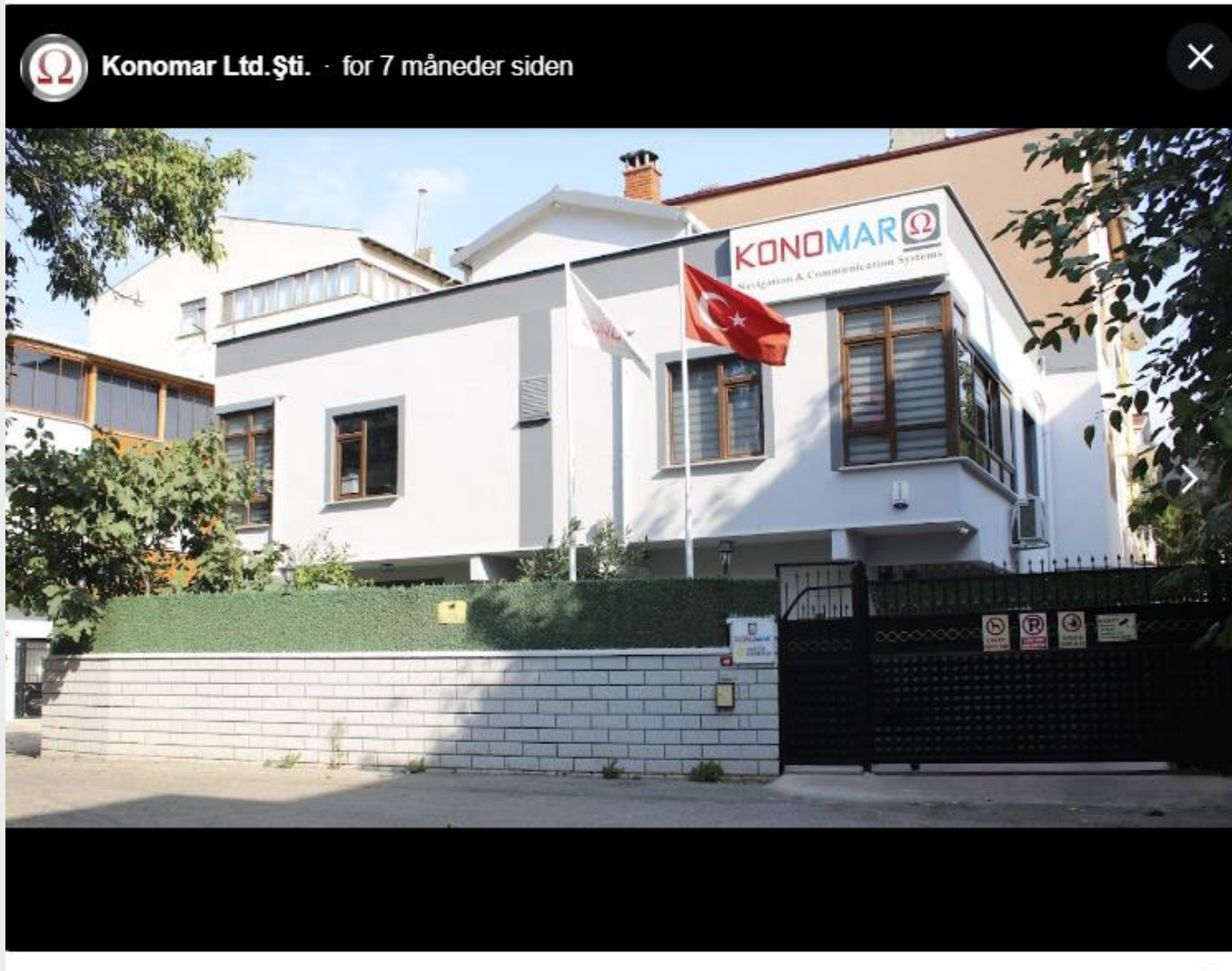
Consolidated List of Financial Sanctions

TARIC database

THEMATIC RESTRICTIONS



Sanctions circumventors targeted by OFAC



Sanctions circumventors targeted by OFAC cont.



U.S. DEPARTMENT OF THE TREASURY

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PRESS RELEASES

On Second Anniversary of Russia's Further Invasion of Ukraine and Following the Death of Aleksey Navalny, Treasury Sanctions Hundreds of Targets in Russia and Globally

February 23, 2024



PRODUCTS GUARANTEE CATALOGUE PRICES CONTACT

+358 402186055

info@hd-parts.fi

Mon - Thu: 08:00 - 16:00
Friday: 08:00 - 15:40

CONTACT FORM:

Name
e-mail
Subject

Message

Submit

SPECIAL OPENING HOURS

We are closed also on the following weekday holidays and inventory days:

11.03.2024

We are temporarily closed for an indefinite time.
Hopefully weeks but could be months.
Meanwhile we still read emails occasionally.

HD-Parts is closed during the following breaks:

09:30 - 09:40
11:30 - 12:00
14:00 - 14:10

Worldwide wholesaler of spare parts for Scania and Volvo

Risk environment– a Norwegian company with an international footprint

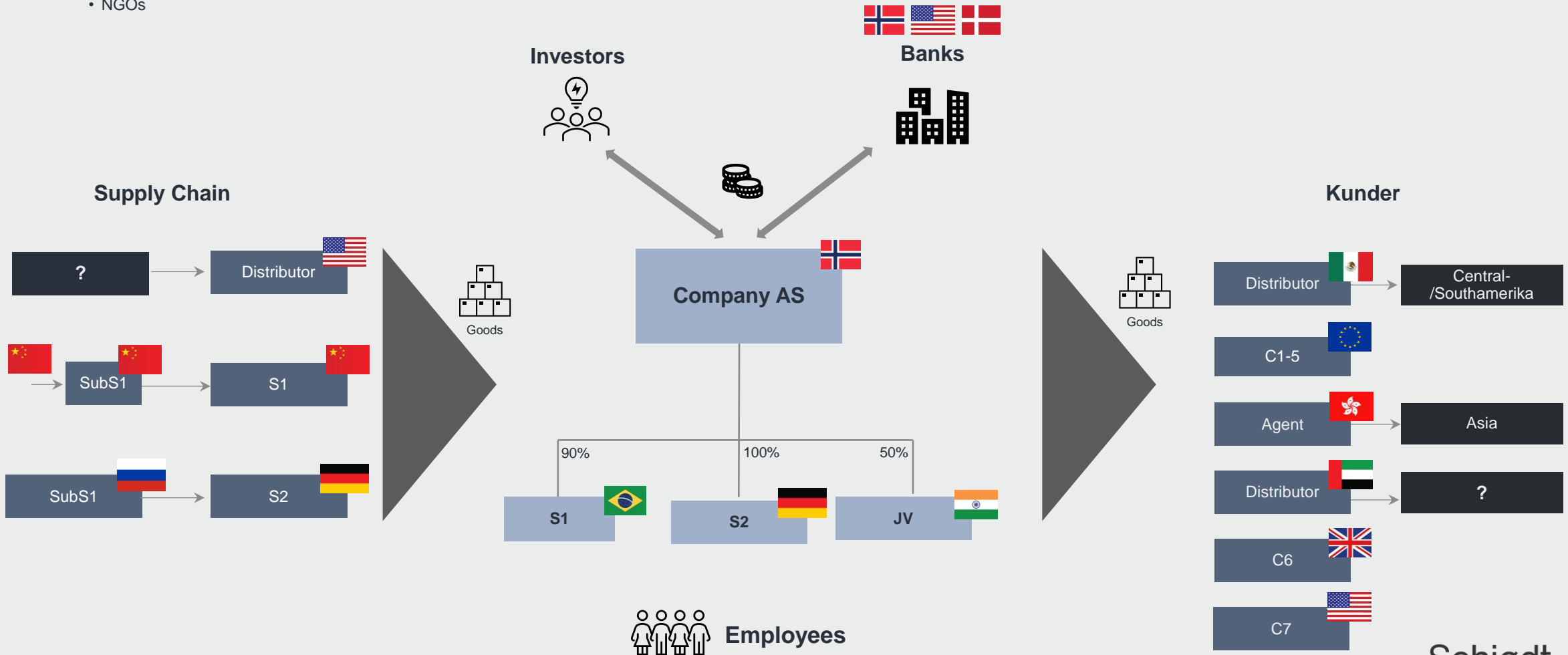


Public

- Media
- Consumers
- NGOs



Authorities



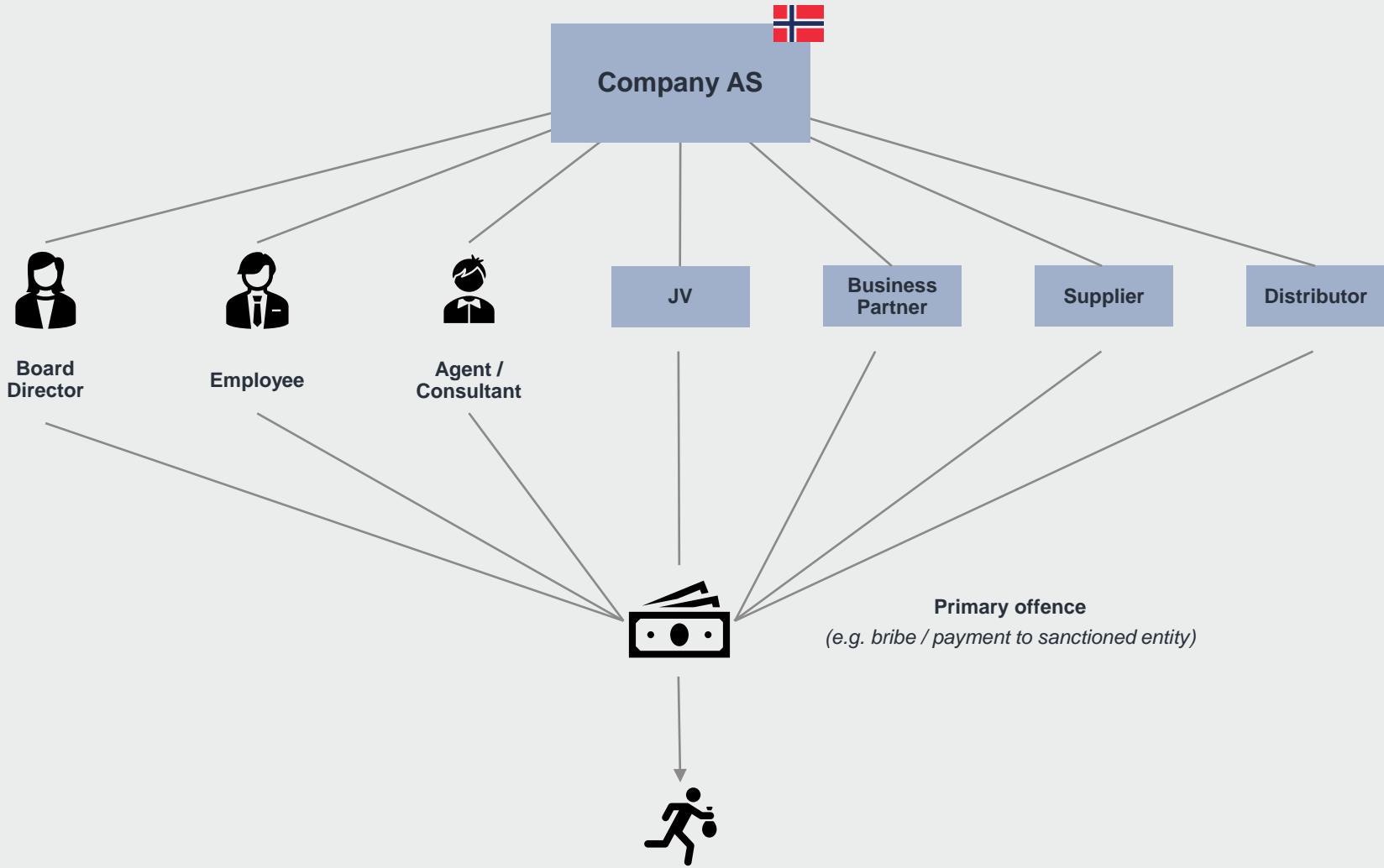
SANCTIONS AND EXPORT CONTROL - CRIMINAL LIABILITY

SANCTIONS AND EXPORT CONTROL VIOLATIONS MAY LEAD TO INDIVIDUAL AND CORPORATE CRIMINAL LIABILITY

- Negligent violations of the Sanctions Act and the Export Control Act are criminalized
- Corporate criminal liability under the Norwegian Penal Code sections 27 and 28:

“When a **penal provision is violated** by a person who has **acted on behalf** of an enterprise, the enterprise **may** be held liable to a penalty. This applies even if no single person meets the culpability or the accountability requirement.”
- “Acted on behalf of” may also extend to non-company personnel
- Discretionary assessment (ref. “*may*”)
 - Relevant factors when determining whether to penalize shall inter alia include whether the enterprise through guidelines, instruction, training, control or other measures could have prevented the offence.
 - Timely remedial actions may also mitigate criminal liability

WHO MAY «ACT ON BEHALF» A COMPANY?



KEY CATEGORIES OF TRADE COMPLIANCE REGULATIONS

Key categories of Trade Compliance regulations (I/III)

Regulatory export control

Does the Company export **goods, technology or services** that are comprised by the Norwegian Export Control Regulations?

Military list

- Ammunition
- Vessels of war
- Bombs, missiles
- Production equipment
- etc.

Dual-use list

- Nuclear materials
- Telecommunication
- Sensors and lasers
- Navigation
- Marine
- Aerospace and propulsion
- etc.

«Catch all-clause»

- ▶ Intended use related to chemical, biological or nuclear weapons
- ▶ Intended for military use in areas subject to arms embargo
- ▶ Intended for military use in areas in war or civil war or where war threatens
- ▶ Potential to develop a state's military capacity where not in Norway's interest

Key categories of Trade Compliance regulations (II/III)

Other export restrictions

Targeted sanctions that prohibit certain exports or technical assistance that directly or indirectly benefit Russian interests

- ▶ Examples
 - ▶ Technology including quantum computing and advanced semiconductors
 - ▶ Aviation and marine sector
 - ▶ Fingerprinting powders, dyes, and inks
 - ▶ Champagne, truffles, soups
 - ▶ Shampoo, handbags and t-shirts
 - ▶ Porcelain or china, toasters
 - ▶ Roses, copper and aluminium wire

Import bans

Targeted sanctions that prohibit the direct or indirect import of certain goods and services related thereto

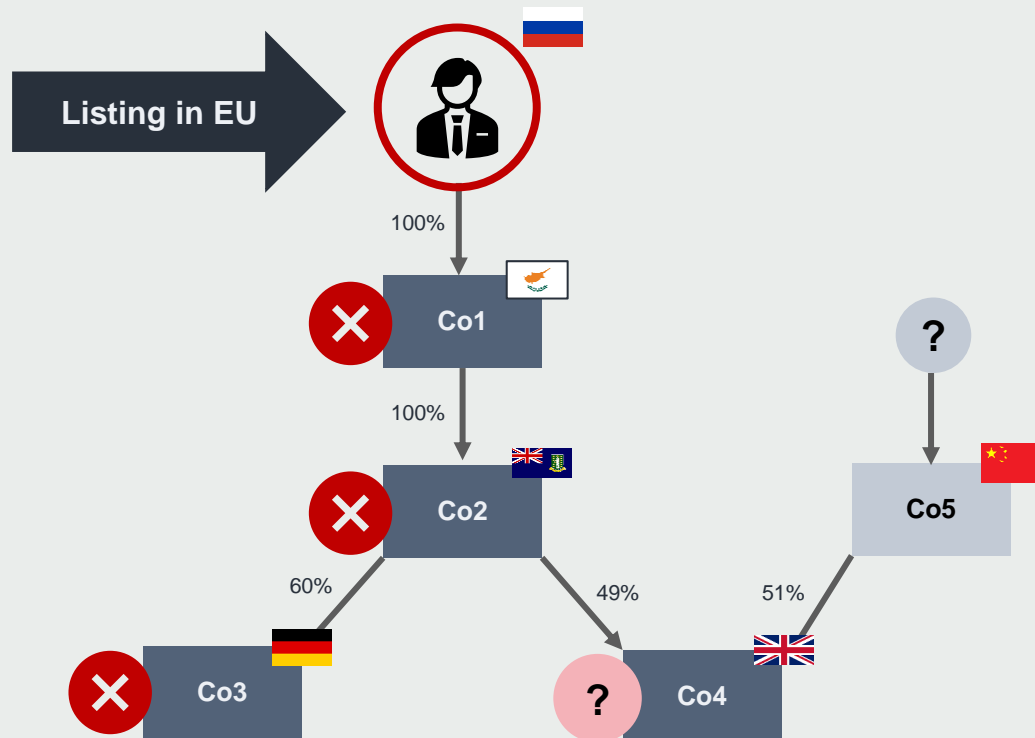
- ▶ Examples
 - ▶ Cement
 - ▶ Wood
 - ▶ Liquor and spirits
 - ▶ Finished and semi-finished steel products
 - ▶ Gold
 - ▶ Seaborne crude oil and refined petroleum products
 - ▶ Coal

Key categories of Trade Compliance regulations (III/III)

Asset block/freeze sanctions (“listing”)

Direct or indirect business interactions with entities or individuals that are subject to sanctions (EU/US/UK+):

“No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I.”



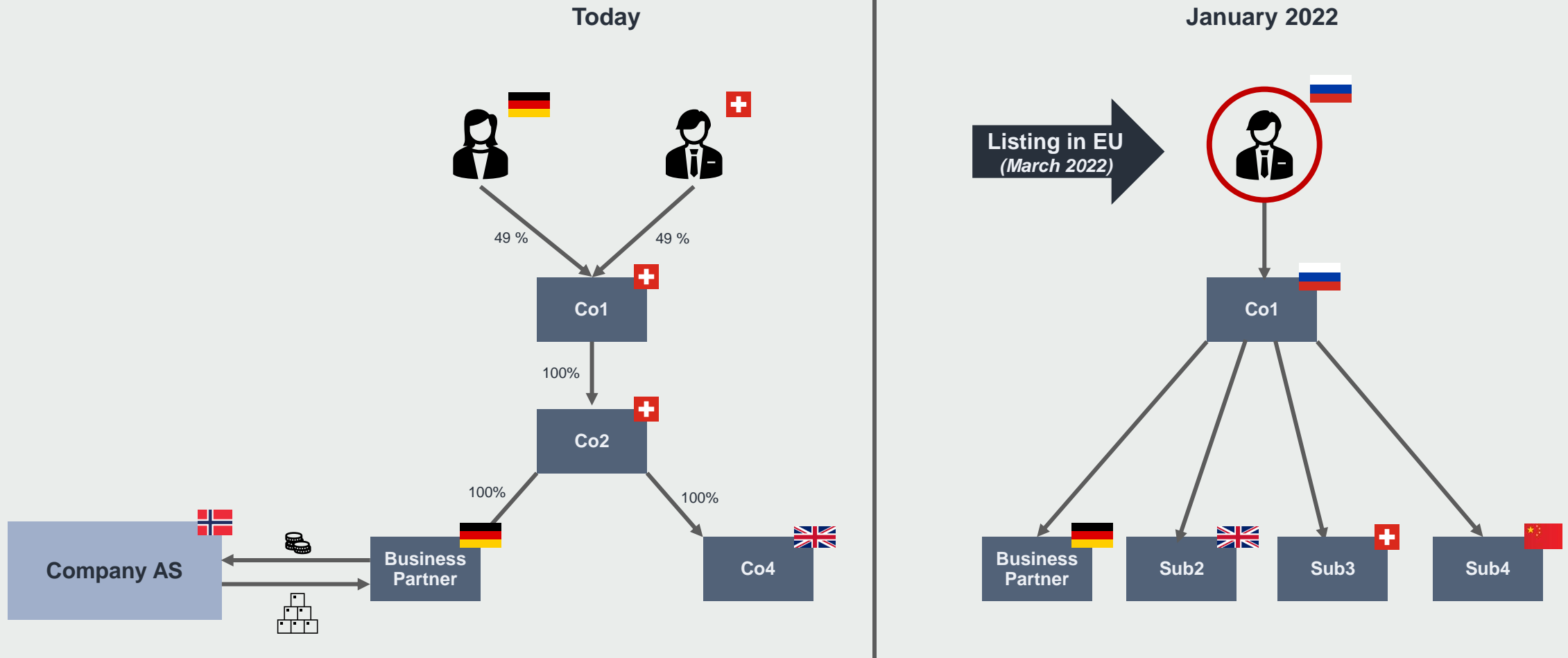
Need for Integrity Due Diligence

- ▶ Ultimate beneficial ownership
- ▶ Sanction through ownership or control

Example 1: «Know your end-user»



Example 2: Ultimate beneficial ownership («straw owners»)



Red flags/concerns

- Reluctance to share information on end-use or to complete end- user form
- Declining installation, training, maintenance
- Last minute changes to shipping instructions that is contrary to customer history
- Use of tax haven/shell companies and/or complex ownership structure
- Signs of proforma ownership of customer
- Payment from another entity than the contracting party
- Use of personal email accounts instead of company email address
- Transactions involving entities with little or no web presence
- Routing purchases through transshipment points used to illegally redirect restricted items to Russia or Belarus (China, Armenia, Turkey, Uzbekistan, Kazakhstan etc.)

COMPLIANCE PROGRAM AND THIRD PARTY RISK MANAGEMENT

Compliance program improvements



Trade Compliance - Third Party Risk Management

- ▶ Adopting a holistic, risk-based and practical Third-Party Risk Management framework
 - ▶ Sanctions and export control risk assessments
 - ▶ Assessing risk indicators such as:
 - ▶ Product portfolio
 - ▶ Business partners (suppliers, customers, intermediaries, JV-partners etc.)
 - ▶ Industries
 - ▶ Jurisdictions
 - ▶ Risk-based IDD (integrity due diligence)
 - ▶ IDD procedure and risk categorization
 - ▶ Collecting risk relevant information from line management and business partner (questionnaire)
 - ▶ Ownership, board, key personnel
 - ▶ End-customer
 - ▶ Other third parties involved in the deliveries (freight forwarders, banks)
 - ▶ Screening of information against sanctions lists, compliance databases and other open sources
 - ▶ Risk-based assessment taking all relevant factors into consideration, including the company's deliveries
- ▶ Ensuring that agreements have appropriate compliance and sanctions clauses
- ▶ Monitoring of business partners and projects (risk reviews, audits etc.)

Acting timely on red flags/matters of concern

▶ “Triggers”

- ▶ Whistleblowing reports or concerns raised by employees or third parties
- ▶ Cancellation of payments from banks
- ▶ Media attention
- ▶ Inquiries from regulators

▶ Preservation of data

▶ Jurisdictional analysis

▶ Privileged fact-finding, targeted due diligence/background checks

▶ Legal assessment of exposure

▶ Interactions with authorities

▶ Remediation (disciplinary actions, revision of policies and procedures etc.)

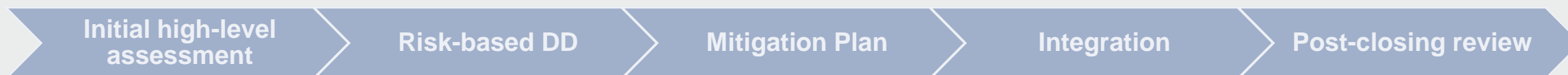
Russland-sanksjonene

Sendte høyteknologi til Russland – mot sjefens ordre

Både bedriften og deres juridiske rådgivere fryktet at handelen ville medføre sanksjonsbrudd. Likevel ble det maritime utstyret sendt til Russland i juli 2022.



Addressing sanctions and export control risks in M&A




Observations

- ▶ Increasingly important due to “new” risk landscape
- ▶ Inherent risk that Target has violated sanctions and/or export control regulations
 - ▶ Imposing (successor) liability risk on target company, management and board
- ▶ Sanctions (and other governance topics) often fall “between stools” in DD processes (Legal, ESG DD)
- ▶ Post-closing compliance integration suffers from (potential) insufficiencies in pre-acquisition DD
- ▶ Increased expectations of post-closing compliance review - assess possibility of self-reporting in case of violations

Corporate Compliance and ESG practise

Offering

- ▶ Broad practice including ESG, anti-corruption, anti-money laundering, sanctions/export controls, human rights, GDPR, whistleblowing, investigations and crisis management.
- ▶ Ability to offer **seamless cross-border services** by leveraging experts from other practice areas such as M&A, competition law, company law, labor law and commercial contracts when required.

 Services	Preventive	<ul style="list-style-type: none">▶ Extensive experience with establishing and revising corporate compliance programs.▶ Serving in-house functions with practical advice in relation to projects, M&A and JVs, including conducting risk assessments, integrity due diligence, contract revisions, training and audits.
	Crisis management	<ul style="list-style-type: none">▶ Extensive track record in assisting companies with corporate investigations and crisis management advice.▶ Services include preservation of data, eDiscovery and interviews, assessment of legal exposure, litigations, advising on remedial actions and self-disclosure.

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