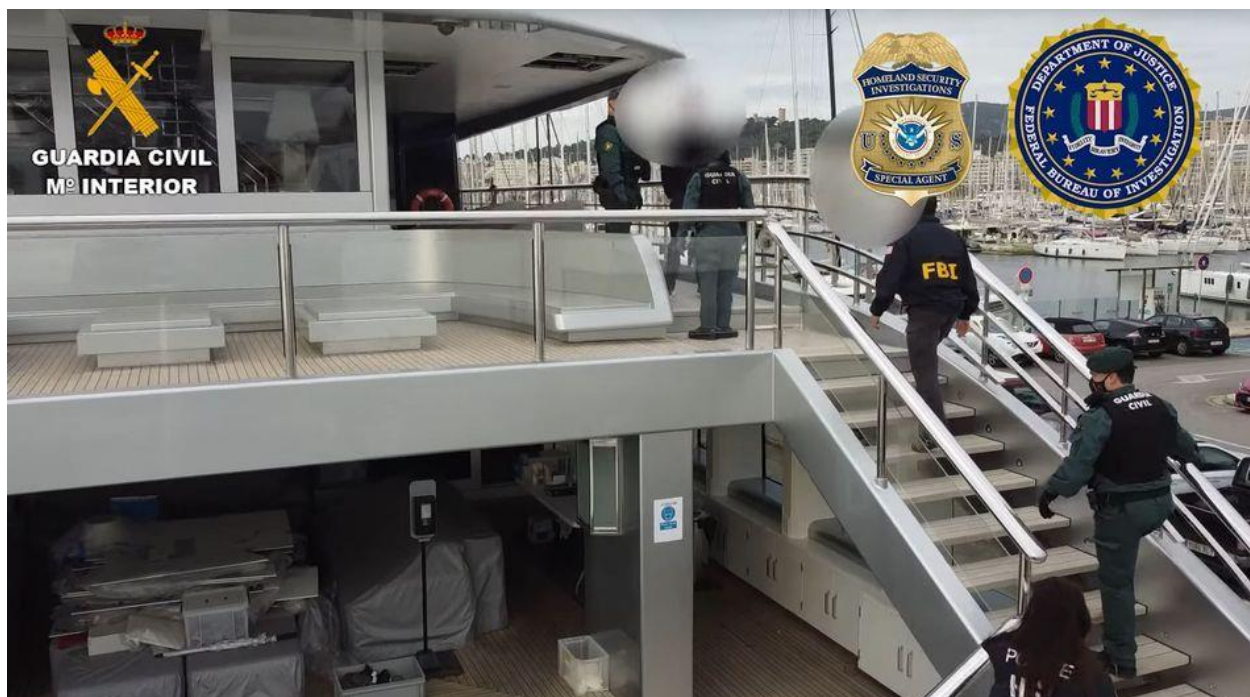


## Immunity deal for yacht company reveals US strategy for oligarch probes

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*US and Spanish law enforcement board the Tango in April after a Spanish court authorised its seizure (Credit: US Justice Department)*

Former federal prosecutors believe the Justice Department's confiscation of a \$90 million superyacht in Spain has outlined a playbook for other attempts to seize Russian oligarchs' hidden assets.

US court documents tied to the seizure of the Tango by Spanish prosecutors in April revealed a small detail about how the Justice Department tied the vessel's to its owner, sanctioned Russian businessman Viktor Vekselberg.

In a footnote in its application for the Tango warrant, the Justice Department said it had subpoenaed an unnamed company and two employees who helped design and build the yacht for information about the boat's real owner. The parties received assurances that any statements they provided would not be used against them.

Three former federal prosecutors specialising in asset forfeiture cases told GIR that the promises made to cooperators in the Tango case signal US authorities' approach: to target oligarchs via the companies and individuals who have helped them spend their cash in lavish ways. Prosecutors said these targets are sitting on troves of information about the luxury cars, boats, planes and homes that oligarchs have put their money into, as well as their travel itineraries and spending habits.

"There are a lot of pressure points there for law enforcement to utilise," said Brian Frey, a prosecutor in the Criminal Division's money laundering and asset recovery section (MLARS) from 2015 to 2018, now at Alston & Bird in Washington, DC. "The types of activities that the ultra-wealthy are known to engage in are where we're going to see this tool used more frequently," he added.

Frey and other ex-prosecutors said the DOJ will likely try to leverage potential charges that such companies could face over their dealings with sanctioned individuals in return for evidence that helps the US to locate and seize oligarchs' wealth. They said companies such as yacht designers, high-end real estate brokers and private jet leasing companies can help the DOJ cut through the layers of shell companies that oligarchs routinely use to hide their ownership of luxury assets.

In the Tango case, an FBI investigation found that Vekselberg used a tangle of offshore companies to distance himself from his yacht. Court documents state that the vessel is owned by a shell company in the British Virgin Islands called Arinter, whose directors include a Cyprus-registered business which has a "sister company" in Russia that has a "direct relationship" with the Renova Group, an investment business founded by Vekselberg.

The US Treasury's office of foreign assets control sanctioned Vekselberg and Renova in 2018, designating them as banned Russian entities who allegedly "play a key role in advancing Russia's malign activities". The agency updated its sanctions against the oligarch in March, shortly after Russia's invasion of Ukraine, accusing Vekselberg of maintaining close ties with President Vladimir Putin and carrying out "diplomatic and soft power activities" on the Kremlin's behalf. A lawyer for Vekselberg has been contacted for comment.

### **Cooperating company's evidence detailed in seizure warrant**

Prosecutors have not identified the company that is cooperating with its investigation into the owner of the Tango, which was designed by London-based Harrison Eidsgaard Design and constructed in 2011 by Dutch boat builder Feadship, according to the company's website.

Spokespersons for the companies, which have not been accused of wrongdoing, did not respond to requests for comment.

Court documents provide insights into how the subpoenaed business became embroiled in an international sanctions evasion investigation. Prosecutors said that the company "assisted Vekselberg with designing and purchasing the yacht" and "provided services to the Tango during its design and building phase". One company employee admitted to meeting with Vekselberg and his wife in person to "arrange details" about the construction of the Tango. Another told investigators that knowing the beneficial owners of a yacht is a regular part of the company's business.

Former prosecutors said that for the unidentified company to be criminally liable for breaching the sanctions imposed on Vekselberg in 2018 – seven years after the yacht was completed – it would have had to have known about the sanctions and continued to deal with the oligarch after that time.

Evelyn Sheehan at Kobre & Kim in Miami, who served as a federal prosecutor in the city for a decade and was deputy chief of the office's asset forfeiture division until 2019, said that – based on the available

information about its conduct – she doubts whether the DOJ ever intended to charge the yacht company, but may have agreed to grant immunity to ensure it cooperated fully.

“People are just really scared of anyone with a badge,” Sheehan said. “Sometimes the only thing that keeps them from helping is the thought: ‘if I open my mouth are you going to prosecute me?’.”

Nevertheless, the ex-prosecutor said the immunity deal is a warning shot for the yacht building industry and other sectors that serve the super-rich and is likely to deter companies from working with sanctioned Russian entities or their suspected proxies.

“I assure you that other yacht builders got word of this,” Sheehan said, adding that the prospect of potential charges will be “quite chilling” for the entire industry.

### **“Immunity is not given lightly”**

Attorney General Merrick Garland hailed the seizure of the *Tango* in April as a major victory for the US’s KleptoCapture task force, established in March to enforce sweeping economic sanctions and export control restrictions targeting Russia for its war in Ukraine.

Former prosecutors said the DOJ can offer immunity in two main ways, through formal or informal agreements. In an informal agreement, also known as “letter immunity”, prosecutors give the witness a written undertaking not to use any evidence they provide in an enforcement action against them.

US prosecutors also have the power to compel witness evidence for their investigations but DOJ guidance states that this formal immunity tool should only be used in “extraordinary circumstances”. Lawyers said that senior DOJ officials would likely have been directly involved in the *Tango* case as the department’s Justice Manual requires prosecutors to seek the approval of the deputy assistant attorney general or “an appropriate assistant attorney general” before exercising their immunity powers.

The DOJ's power to grant witnesses immunity stems from section 6002 of the US criminal code, which entitles the agency to compel evidence from subjects as long as the evidence they provide – or “any information directly or indirectly derived” from it – isn't subsequently used to prosecute them.

“It's not an easy process, immunity is not given lightly,” Frey said of the DOJ's compulsion powers. “Particularly in cases of such national and international significance.”

He said that if the company secured a formal immunity deal in the Tango case then the high-level approvals required would show that senior department officials have recognised the importance of obtaining evidence from cooperating witnesses in Russian sanctions evasion investigations – meaning more such deals are likely.

### **Businesses in DOJ crosshairs over oligarch dealings**

The DOJ said in March that it is also looking to prosecute “enablers and gatekeepers” who help sanctioned individuals or entities to move their assets. Former prosecutors said yacht builders could fall into this category of oligarch facilitators, along with many other companies providing luxury goods and services to wealthy clients.

“I would not be surprised if the government is already looking at third parties who are not cooperating, or don't yet know they are on the government's radar, with a view to pursuing those individuals or entities as well,” said ex-MLARS prosecutor Anand Sithian, now at Crowell & Moring in New York.

Lawyers said there are fewer compliance and due diligence obligations on businesses in luxury services industries such as yacht building compared to the banking and finance sector, creating a higher risk of companies doing business with sanctioned entities or individuals. What's more, prosecutors can often establish jurisdiction if the US dollar has been used to make or receive payments even when it concerns companies that have done business with sanctioned parties outside the US.

“The US government is able to pursue individuals and entities that are abroad and do not have a US presence,” Sithian said.