

**Alert | UK Civil Fraud & Business Disputes/
Ukraine Conflict**



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UK Russian Sanctions – Updated Guidance on Ownership and Control

The UK Office of Financial Sanctions Implementation (OFSI) has updated its guidance on ownership and control.

If a person or entity is on the UK sanctions list (known as a “designated person”), their assets will be frozen. This extends to assets owned or controlled, directly or indirectly, by the designated person.

An entity is owned or controlled directly or indirectly by another person in any of the following circumstances:

- 1) the person holds (directly or indirectly) more than 50% of the shares or voting rights in an entity;
- 2) the person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity; or
- 3) it is reasonable to expect that the person would be able in significant respects to ensure that the affairs of a company are conducted in accordance with their wishes.

The new guidance clarifies that when making an assessment on ownership and control, OFSI would not simply aggregate different designated persons’ holdings in a company, unless, for example, the shares or

rights are subject to a joint arrangement between designated parties or one party controls the rights of another.

Conclusion

The guidance is significant in that a company can be majority or even, it seems, wholly owned by a combination of designated persons but, provided no single designated person owns more than 50% of shares or voting rights, neither the company nor its assets would be caught by the asset freeze without evidence of a joint arrangement between the designated parties or evidence that a designated person controls the company. Proving a “joint arrangement” or practical control of a company poses more challenging evidential hurdles than a test of aggregated ownership, which would have been a more straightforward test for OFSI to implement. This is particularly the case when companies have been incorporated in offshore tax havens where there may be limited corporate transparency showing ultimate ownership and control.

In practice, one would expect companies that are majority or wholly owned by designated persons to be designated in their own right. However, if that is not the case, the test of ownership and control appears to provide a key and perhaps surprising loophole which will mean that some assets of designated persons will not be caught by the asset freeze and could be disposed of.

While this updated guidance on its face may seem helpful, it arguably creates more complexity for diligence and compliance efforts. It will be difficult under normal circumstances for unrelated third parties to have access to corporate governance documents of entities with which they are dealing to ascertain voting blocks or other arrangements under which aggregate sanctioned person ownership/control would render an entity itself to be sanctioned. At the same time, the UK Government has announced that sanctions violations will be treated by a strict liability standard. Although the necessary secondary legislation implementing this new standard is not yet in force, it is expected imminently. This standard of strict liability will put industry in a difficult position of likely having insufficient information to confirm definitively whether aggregate sanctioned person ownership renders an entity sanctioned but being held to a strict liability standard in the event the UK Government believes the entity is sufficiently controlled (and the UK Government will have greater access to classified and other sensitive information). Furthermore, this approach deviates from the U.S. and EU guidance, which treats aggregate sanctioned person ownership of 50% or more as rendering an entity sanctioned—regardless of other indicia of control or voting blocks. Compliance professionals will have to determine whether it makes sense from a risk-based standpoint to follow the UK guidance, or a more conservative approach to simply treat aggregate ownership as sufficient in making business decisions involving entities with sanctioned person ownership.

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