

WHITEPAPER

APRIL 7, 2022

Author

Moody's Analytics Financial Crime
Compliance Industry Practice Group

Dr. Michelle Frasher, Sr. Director – Financial
Crime Compliance Practice Lead, Moody's
Analytics KYC

Contact Us

Americas
+1.212.553.1658
clientservices@moody.com

Europe
+44.20.7772.5454
clientservices.emea@moody.com

Asia (Excluding Japan)
+852.2916.1121
clientservices.asia@moody.com

Japan
+81.3.5408.4100
clientservices.japan@moody.com

Sanctions Compliance: understanding the role of indirect ownership and control

To comply with sanctions rules, you must consider ownership and control of your customers and business partners – including indirect ownership and control, which can be difficult to determine.

Countries use sanctions as foreign policy tools. Sanctions can take a variety of forms, including travel bans, asset freezes, embargoes, capital restraints, and aid and trade restrictions. Doing business with a directly sanctioned entity poses risks, but entities can also be "indirectly" sanctioned, or sanctioned "by extension", owing to their ownership or control. Identifying such entities can be complicated and time-consuming if you lack the proper systems and data.

A robust sanctions compliance program should include ownership and control requirements that consider:

- » How indirect ownership and control affects supply chains
- » Ownership percentages in the aggregate
- » Director and ownership control

Moody's Analytics provides data and tools that can help protect you from sanctions risks and contribute to a vigorous risk strategy.

Table of Contents

- Ownership and control** **3**
- United States Treasury – Office of Foreign Asset Control (OFAC) 3
- United Kingdom 3
- European Union 4

- How Moody's Analytics can help you identify indirect sanctions exposure** **4**
- Orbis Power Score – Helping you to determine your control risk 4
- How the Power Score can help you 4

- Case studies** **5**
- What is "control" below 50% ownership? 5
- Ownership, power and control 5

- Enhance your sanctions compliance program to reflect influence and control analytics** **5**

Ownership and control

Entities on a sanctions list are directly sanctioned, be they public or private companies, individuals, industries, government agencies, or entire countries. However, entities not named on the US, UK or European Union sanctions regimes may be blocked because they are directly or indirectly majority-owned by entities that are on sanctions lists. The European Union and the United Kingdom go even further – indirectly blocked entities also include those over which directly sanctioned entities have control, but not ownership. Because of the differences among the regimes, accurate data and efficient screening tools are essential to understand your risk exposure.

Table 1 Sanctions regimes' ownership and control requirements for entities on sanctions lists

	US OFAC	UK	EU
Ownership	Yes	Yes	Yes
Control	No	Yes	Yes

United States Treasury – Office of Foreign Asset Control (OFAC)

In the United States, any entity that is at least 50% owned in the aggregate, directly or indirectly, by one or more sanctioned entities is considered to be sanctioned. Thus, compliance teams may have to analyze corporate structures in detail to identify directly sanctioned entities with ownership stakes in another entity. For entities majority-owned by persons on OFAC's list of Specially Designated Persons and Blocked Nationals, any property and interests in the property of such an entity are blocked regardless of whether the entity itself is sanctioned.

OFAC's 50% rule applies only to ownership, not to control – a divergence with the European Union and the United Kingdom. In the United States, an entity that is at least 50% controlled, but not owned, by one or more entities on a sanctions list is not considered to be sanctioned.

OFAC urges caution when considering an entity that is not sanctioned in which one or more sanctioned entities have a significant ownership interest that is less than 50%, or which one or more sanctioned persons control by means other than majority ownership.

United Kingdom¹

In contrast to the United States, the United Kingdom defines indirectly sanctioned entities to be those owned *or controlled*, directly or indirectly, by a person with more than 50% shares or voting rights. A person is considered to have control if their voting rights or influence enable them to appoint or remove members of the board of directors, or if the entity could be reasonably expected to conduct its affairs in line with that person's wishes. UK law only considers aggregation of ownership percentages where there is also evidence of control or a joint agreement between the designated parties.²

As in the United States, asset freeze sanctions include the prohibition of new funds or economic resources to a sanctioned person, and extend to the assets and funds of that person's subsidiaries and controlled entities. These include companies absent from sanctions lists in which the person is a passive investor, for example.³

The UK's 2022 Economic Crime (Transparency and Enforcement) Act⁴ creates new liabilities for breaching sanctions, and is likely to increase the number of fines given out and their size.

¹ https://www.legislation.gov.uk/ukpga/2018/13/pdfs/ukpga_20180013_en.pdf; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961516/General_Guidance_-_UK_Financial_Sanctions.pdf; <https://www.europeansanctions.com/eu-guidance/>

² <https://www.gov.uk/government/publications/financial-sanctions-faqs>

³ <https://www.debevoise.com/-/media/files/insights/publications/2021/01/20210113-the-uks-sanctions-regime-comes-into-force.pdf>

⁴ <https://bills.parliament.uk/bills/3120>

European Union⁵

Like the United Kingdom, the European Union considers both ownership and control when determining indirectly sanctioned entities. Ownership applies when an entity has more than 50% of the proprietary rights of an entity or a majority interest in it. Control is defined similarly to how it is in the United Kingdom. The impact of voting rights to be considered includes the ability to remove or appoint members of the “administrative, management or supervisory body”, alone or through shareholder agreement; the right to “exercise a dominant influence” over the entity; the right of use over at least part of the entity’s assets; and sharing in the entity’s financial liabilities.

How Moody's Analytics can help you identify indirect sanctions exposure

Orbis Power Score – Helping you to determine your control risk

Moody's Analytics Power Score helps to reveal the most influential shareholders in a company. The Power Score is a percentage of influence assigned to shareholders (individuals or companies) that sheds light on who controls the company de facto and influences voting and decision-making.

The Power Score uses Orbis ownership data and the Banzhaf power index, which is based on the probability of changing an outcome of a vote where voting rights are not necessarily equally divided among the voters or shareholders.

You can access the Power Score in Orbis – a powerful data resource on private companies, with information on companies in all countries. The Power Score is also available through a data feed.

How the Power Score can help you

The Power Score gives an instant overview of where power and control can rest in a company, irrespective of ownership. Using this information, you can:

- » Identify shareholders who are not legal owners but who are potentially powerful
- » Assess a potential business partner with knowledge of its real power shareholders
- » Get a quick overview of the most influential shareholders to persuade in negotiations
- » Uncover risk when onboarding and monitoring clients and third parties by exploring permutations of shareholders who could create decision-influencing coalitions, including family members
- » Identify less visible power centers in a company
- » Speed up your screening process with an immediate overview of the company’s most influential shareholders, highlighting shareholders who can control the company

The Power Score can be used for a company that:

- » Has no beneficial owners or they can't be identified
- » Has no defined global ultimate owner
- » Is independent
- » Has no identified shareholder with more than 50% ownership

⁵ <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>

Case studies

What is “control” below 50% ownership?

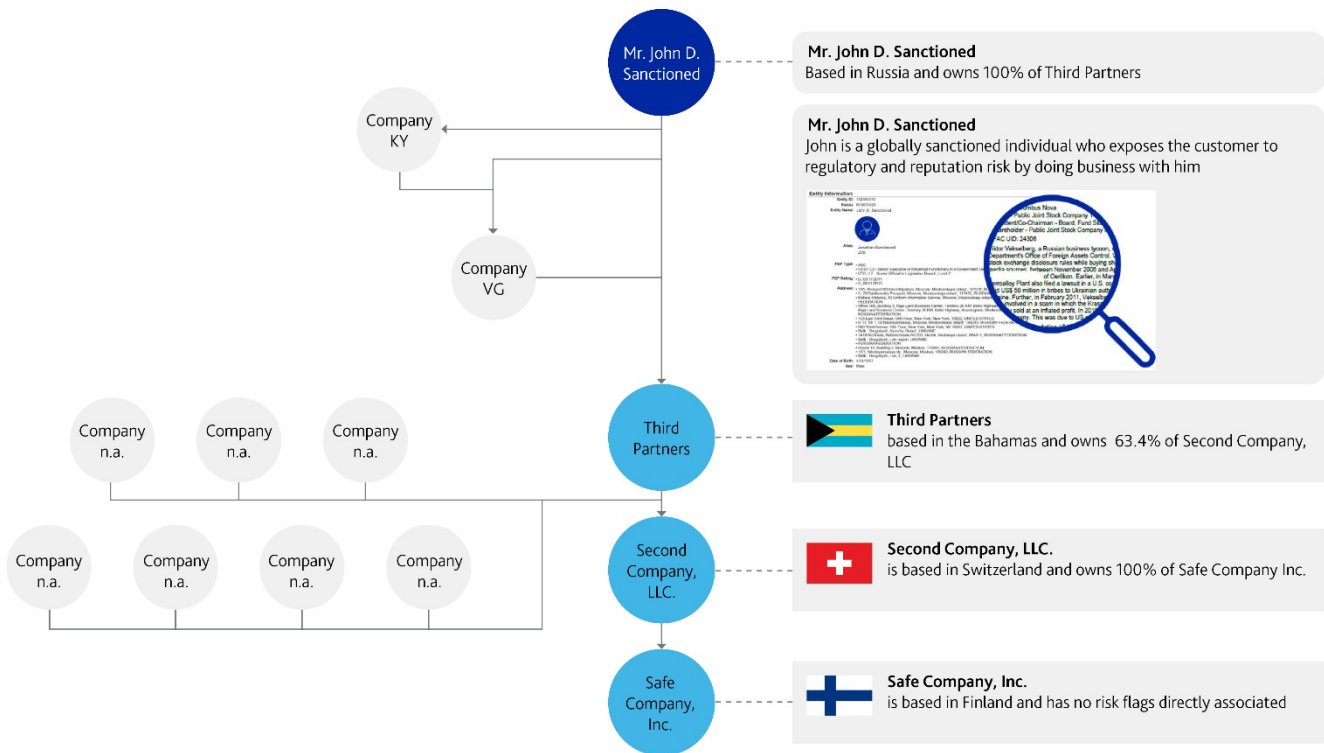
The UK government recently ruled that an individual was deemed to have “effective control” of a company because of their 28.7% holding. This was a determining factor in the person’s designation as a sanctioned individual.

In its assessment of control, the government also referred to close associates, highlighting the “influence” dimension to the test of control, and the need for a holistic assessment of networks. Most of the directors of the company resigned following the individual’s designation, showing the perceived risks of close association.

Ownership, power and control

An individual sanctioned by the UK and the EU is the sole owner of a holding company that owns 38.3% in a publicly traded entity. However, according to our Power Score, the holding company exerts total control over the public entity, providing the individual with de facto control.

Figure 1 Seemingly safe private company owned by a sanctioned individual



Enhance your sanctions compliance program to reflect influence and control analytics

Moody’s Analytics combines timely sanctions data with detailed ownership and control information drawn from a range of sources to enable robust risk analysis of companies around the world.

Updates to sanctions lists are processed and available to customers within one business day of publication.

Moody’s Analytics [Orbis](#) identifies individuals in the ownership structure creating a clear link between sanctioned entities and those sanctioned by extension.

[Contact us](#) today to review your sanctions screening process. If you need to assess your current risk exposure, we will work with you to complete a complimentary exposure check.

© 2022 Moody's Corporation, Moody's Investors Service, Inc., Moody's Analytics, Inc. and/or their licensors and affiliates (collectively, "MOODY'S"). All rights reserved.

CREDIT RATINGS ISSUED BY MOODY'S CREDIT RATINGS AFFILIATES ARE THEIR CURRENT OPINIONS OF THE RELATIVE FUTURE CREDIT RISK OF ENTITIES, CREDIT COMMITMENTS, OR DEBT OR DEBT-LIKE SECURITIES, AND MATERIALS, PRODUCTS, SERVICES AND INFORMATION PUBLISHED BY MOODY'S (COLLECTIVELY, "PUBLICATIONS") MAY INCLUDE SUCH CURRENT OPINIONS. MOODY'S DEFINES CREDIT RISK AS THE RISK THAT AN ENTITY MAY NOT MEET ITS CONTRACTUAL FINANCIAL OBLIGATIONS AS THEY COME DUE AND ANY ESTIMATED FINANCIAL LOSS IN THE EVENT OF DEFAULT OR IMPAIRMENT. SEE APPLICABLE MOODY'S RATING SYMBOLS AND DEFINITIONS PUBLICATION FOR INFORMATION ON THE TYPES OF CONTRACTUAL FINANCIAL OBLIGATIONS ADDRESSED BY MOODY'S CREDIT RATINGS. CREDIT RATINGS DO NOT ADDRESS ANY OTHER RISK, INCLUDING BUT NOT LIMITED TO: LIQUIDITY RISK, MARKET VALUE RISK, OR PRICE VOLATILITY. CREDIT RATINGS, NON-CREDIT ASSESSMENTS ("ASSESSMENTS"), AND OTHER OPINIONS INCLUDED IN MOODY'S PUBLICATIONS ARE NOT STATEMENTS OF CURRENT OR HISTORICAL FACT. MOODY'S PUBLICATIONS MAY ALSO INCLUDE QUANTITATIVE MODEL-BASED ESTIMATES OF CREDIT RISK AND RELATED OPINIONS OR COMMENTARY PUBLISHED BY MOODY'S ANALYTICS, INC. AND/OR ITS AFFILIATES. MOODY'S CREDIT RATINGS, ASSESSMENTS, OTHER OPINIONS AND PUBLICATIONS DO NOT CONSTITUTE OR PROVIDE INVESTMENT OR FINANCIAL ADVICE, AND MOODY'S CREDIT RATINGS, ASSESSMENTS, OTHER OPINIONS AND PUBLICATIONS ARE NOT AND DO NOT PROVIDE RECOMMENDATIONS TO PURCHASE, SELL, OR HOLD PARTICULAR SECURITIES. MOODY'S CREDIT RATINGS, ASSESSMENTS, OTHER OPINIONS AND PUBLICATIONS DO NOT COMMENT ON THE SUITABILITY OF AN INVESTMENT FOR ANY PARTICULAR INVESTOR. MOODY'S ISSUES ITS CREDIT RATINGS, ASSESSMENTS AND OTHER OPINIONS AND PUBLISHES ITS PUBLICATIONS WITH THE EXPECTATION AND UNDERSTANDING THAT EACH INVESTOR WILL, WITH DUE CARE, MAKE ITS OWN STUDY AND EVALUATION OF EACH SECURITY THAT IS UNDER CONSIDERATION FOR PURCHASE, HOLDING, OR SALE.

MOODY'S CREDIT RATINGS, ASSESSMENTS, OTHER OPINIONS, AND PUBLICATIONS ARE NOT INTENDED FOR USE BY RETAIL INVESTORS AND IT WOULD BE RECKLESS AND INAPPROPRIATE FOR RETAIL INVESTORS TO USE MOODY'S CREDIT RATINGS, ASSESSMENTS, OTHER OPINIONS OR PUBLICATIONS WHEN MAKING AN INVESTMENT DECISION. IF IN DOUBT YOU SHOULD CONTACT YOUR FINANCIAL OR OTHER PROFESSIONAL ADVISER.

ALL INFORMATION CONTAINED HEREIN IS PROTECTED BY LAW, INCLUDING BUT NOT LIMITED TO, COPYRIGHT LAW, AND NONE OF SUCH INFORMATION MAY BE COPIED OR OTHERWISE REPRODUCED, REPACKAGED, FURTHER TRANSMITTED, TRANSFERRED, DISSEMINATED, REDISTRIBUTED OR RESOLD, OR STORED FOR SUBSEQUENT USE FOR ANY SUCH PURPOSE, IN WHOLE OR IN PART, IN ANY FORM OR MANNER OR BY ANY MEANS WHATSOEVER, BY ANY PERSON WITHOUT MOODY'S PRIOR WRITTEN CONSENT.

MOODY'S CREDIT RATINGS, ASSESSMENTS, OTHER OPINIONS AND PUBLICATIONS ARE NOT INTENDED FOR USE BY ANY PERSON AS A BENCHMARK AS THAT TERM IS DEFINED FOR REGULATORY PURPOSES AND MUST NOT BE USED IN ANY WAY THAT COULD RESULT IN THEM BEING CONSIDERED A BENCHMARK.

All information contained herein is obtained by MOODY'S from sources believed by it to be accurate and reliable. Because of the possibility of human or mechanical error as well as other factors, however, all information contained herein is provided "AS IS" without warranty of any kind. MOODY'S adopts all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from sources MOODY'S considers to be reliable including, when appropriate, independent third-party sources. However, MOODY'S is not an auditor and cannot in every instance independently verify or validate information received in the rating process or in preparing its Publications.

To the extent permitted by law, MOODY'S and its directors, officers, employees, agents, representatives, licensors and suppliers disclaim liability to any person or entity for any indirect, special, consequential, or incidental losses or damages whatsoever arising from or in connection with the information contained herein or the use of or inability to use any such information, even if MOODY'S or any of its directors, officers, employees, agents, representatives, licensors or suppliers is advised in advance of the possibility of such losses or damages, including but not limited to: (a) any loss of present or prospective profits or (b) any loss or damage arising where the relevant financial instrument is not the subject of a particular credit rating assigned by MOODY'S.

To the extent permitted by law, MOODY'S and its directors, officers, employees, agents, representatives, licensors and suppliers disclaim liability for any direct or compensatory losses or damages caused to any person or entity, including but not limited to by any negligence (but excluding fraud, willful misconduct or any other type of liability that, for the avoidance of doubt, by law cannot be excluded) on the part of, or any contingency within or beyond the control of, MOODY'S or any of its directors, officers, employees, agents, representatives, licensors or suppliers, arising from or in connection with the information contained herein or the use of or inability to use any such information.

NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, TIMELINESS, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY CREDIT RATING, ASSESSMENT, OTHER OPINION OR INFORMATION IS GIVEN OR MADE BY MOODY'S IN ANY FORM OR MANNER WHATSOEVER.

Moody's Investors Service, Inc., a wholly-owned credit rating agency subsidiary of Moody's Corporation ("MCO"), hereby discloses that most issuers of debt securities (including corporate and municipal bonds, debentures, notes and commercial paper) and preferred stock rated by Moody's Investors Service, Inc. have, prior to assignment of any credit rating, agreed to pay to Moody's Investors Service, Inc. for credit ratings opinions and services rendered by it fees ranging from \$1,000 to approximately \$5,000,000. MCO and Moody's Investors Service also maintain policies and procedures to address the independence of Moody's Investors Service credit ratings and credit rating processes. Information regarding certain affiliations that may exist between directors of MCO and rated entities, and between entities who hold credit ratings from Moody's Investors Service and have also publicly reported to the SEC an ownership interest in MCO of more than 5%, is posted annually at www.moody.com under the heading "Investor Relations — Corporate Governance — Director and Shareholder Affiliation Policy."

Additional terms for Australia only: Any publication into Australia of this document is pursuant to the Australian Financial Services License of MOODY'S affiliate, Moody's Investors Service Pty Limited ABN 61 003 399 657AFSL 336969 and/or Moody's Analytics Australia Pty Ltd ABN 94 105 136 972 AFSL 383569 (as applicable). This document is intended to be provided only to "wholesale clients" within the meaning of section 761G of the Corporations Act 2001. By continuing to access this document from within Australia, you represent to MOODY'S that you are, or are accessing the document as a representative of, a "wholesale client" and that neither you nor the entity you represent will directly or indirectly disseminate this document or its contents to "retail clients" within the meaning of section 761G of the Corporations Act 2001. MOODY'S credit rating is an opinion as to the creditworthiness of a debt obligation of the issuer, not on the equity securities of the issuer or any form of security that is available to retail investors.

Additional terms for Japan only: Moody's Japan K.K. ("MJKK") is a wholly-owned credit rating agency subsidiary of Moody's Group Japan G.K., which is wholly-owned by Moody's Overseas Holdings Inc., a wholly-owned subsidiary of MCO. Moody's SF Japan K.K. ("MSFJ") is a wholly-owned credit rating agency subsidiary of MJKK. MSFJ is not a Nationally Recognized Statistical Rating Organization ("NRSRO"). Therefore, credit ratings assigned by MSFJ are Non-NRSRO Credit Ratings. Non-NRSRO Credit Ratings are assigned by an entity that is not a NRSRO and, consequently, the rated obligation will not qualify for certain types of treatment under U.S. laws. MJKK and MSFJ are credit rating agencies registered with the Japan Financial Services Agency and their registration numbers are FSA Commissioner (Ratings) No. 2 and 3 respectively.

MJKK or MSFJ (as applicable) hereby disclose that most issuers of debt securities (including corporate and municipal bonds, debentures, notes and commercial paper) and preferred stock rated by MJKK or MSFJ (as applicable) have, prior to assignment of any credit rating, agreed to pay to MJKK or MSFJ (as applicable) for credit ratings opinions and services rendered by it fees ranging from JPY100,000 to approximately JPY550,000,000.

MJKK and MSFJ also maintain policies and procedures to address Japanese regulatory requirements.