

WHITEPAPER

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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.

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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?

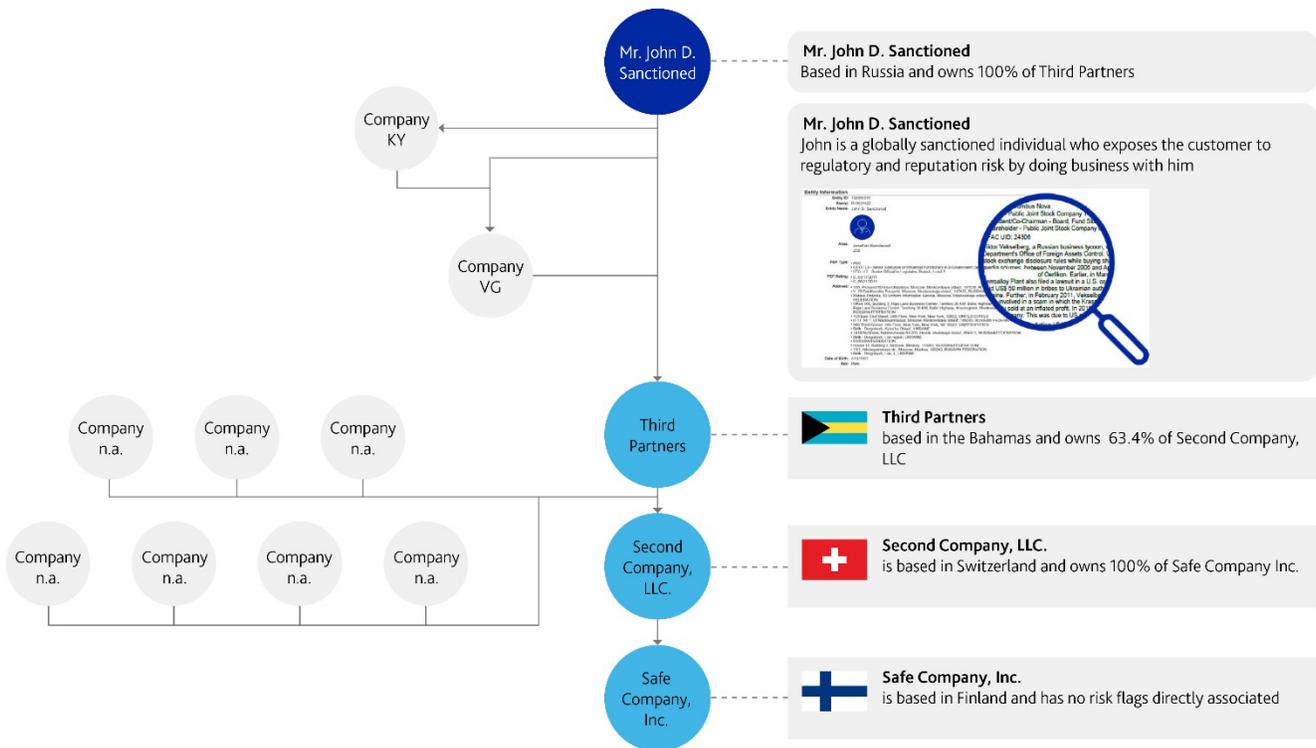
The UK government recently ruled that an individual was deemed to have “effective control” of a company because of their 28.7% holding. This was a determining factor in the person’s designation as a sanctioned individual.

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.

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