

## NOTION OF OWNERSHIP / CONTROL IN UK SANCTIONS: LEGISLATION, CASE LAW, AND OFFICIAL GUIDANCE

April 12, 2024

Generally, where a person is designated for blocking sanctions, the same restrictions, including asset freeze, apply to any person controlled by that expressly designated person. In this regard, the specific control criteria set out in the relevant national sanctions regulations are of utmost importance. In particular, strength and comprehensiveness of arguments in favour of absence of sanctioned person's control may determine the result of a sanctions-related dispute, such as, *e.g.*, an asset unfreezing dispute, a delisting procedure or a dispute with respect to contract's termination due to designation of a counterparty.

The UK is no exception – the key sanctions legislation, the *Russia Sanctions (EU Exit) Regulations 2019* (the "**Regulations**"), prohibit any transaction involving property owned either by a designated person or any person owned or controlled directly or indirectly by such designated person.<sup>1</sup> The Regulations use words "owned or controlled" jointly, *i.e.*, the Regulations interpret it as a single concept and set out specific criteria for the notion of "ownership or control". Read more about the notion of "ownership or control" in the UK sanctions legislation and specific cases of its application in our Alert.

*This material has been prepared on the basis of publicly available information, is for reference only and does not constitute advice or legal opinion. Should you have any questions regarding this communication, please contact us at [info@whitesquarepartners.com](mailto:info@whitesquarepartners.com).*

---

<sup>1</sup> [Regulation 11\(7\)](#).

## EXECUTIVE SUMMARY

- A person is owned or controlled by a sanctioned person, if a sanctioned person holds directly or indirectly more than 50% of the shares or voting rights in the former person, holds the right directly or indirectly to appoint or remove a majority of the former person's board of directors or otherwise may achieve the result that affairs of the former person are conducted in accordance with the sanctioned person's wishes.
- Regarding an entity which does not have a share capital, such entity, inter alia, is deemed to be owned or controlled by a person where such person (a) either may block changes to the overall policy of an entity or to the terms of its constitution or (b) holds a right to share in more than 50% of the capital/profits of that entity.
- If two or more persons each hold a share or right jointly, each of them is treated as holding that share or right. By way of illustration, if more than 50% of shares in an entity are jointly owned by three persons, and at least one of them is sanctioned, then an entity shall be deemed to be owned/controlled by a sanctioned person.
- An individual (e.g., a family member or a close friend) may also be deemed to be under control of a sanctioned person, where the latter is using the former to enter into transactions. In that case, such individual shall be subject to the same restrictions as a sanctioned person.
- Where a trust's beneficiary is a sanctioned person, generally, such trust's assets shall be blocked. However, if a trust is a discretionary one (i.e., where a beneficiary may not cause a trustee to make a distribution of trust assets), it may be asserted that a beneficiary has no interest in trust assets whatsoever, and, accordingly, beneficiary's designation shall not incur blocking of such trust assets.

## I. OWNERSHIP/CONTROL CRITERIA

A sanctioned person is deemed to own or control an entity if one of the following conditions is met:<sup>2</sup>

- (i). a sanctioned person holds directly or indirectly more than 50%<sup>3</sup> of the shares or voting rights in an entity;
- (ii). a sanctioned person holds the right directly or indirectly to appoint or remove a majority of the entity's board of directors; or
- (iii). a sanctioned person is able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of an entity are conducted in accordance with that sanctioned person's wishes.

Ownership or control criteria (i) and (ii) are rather specific and easily verified. Criterion (iii), by contrast, is broad and discretionary, and, *inter alia*, covers situations where a sanctioned person, absent any formal rights with respect to an entity, nonetheless asserts control thereover.

A person owns or controls an entity indirectly where it does so via one or more intermediate entities.<sup>4</sup> For example, where a sanctioned person owns 60% of parent company's shares, and the parent company in turn owns 60% of subsidiary's shares, a sanctioned person shall be deemed to own or control both the parent company and its subsidiary.

UK courts note that in construing the above ownership/control criteria, one shall take into account the objectives of sanctions pressure on Russia, which are achieved, *inter alia*, by preventing access of sanctioned persons to assets or funds.<sup>5</sup>

## II. MEANING OF SPECIFIC TERMS IN REGULATIONS

The Regulations provide guidance for specific situations, in particular:

- *joint ownership of shares* – where (a) more than 50% of the shares of a legal entity are jointly held by several persons, and (b) at least one of them is a designated person, the relevant legal entity shall be deemed to be owned or controlled by a designated person;<sup>6</sup>
- *joint arrangements between shareholders or rights' holders* – each party to an arrangement is treated as holding the combined shares or rights of all parties.<sup>7</sup> An "arrangement" is defined as any scheme, agreement or understanding, custom or practice, whether or not legally enforceable, that involves joint exercise of all or substantially all shareholder rights;<sup>8</sup>
- *holding more than 50% of the rights in relation to an entity which does not have a share capital* – if (a) under the entity's constitution, a person is able to block changes to the overall policy of such entity or to the terms of its constitution, and/or (b) a person is holding a right to share in more than 50% of the capital or profits of such entity, then such person is deemed to control such entity;<sup>9</sup>
- *the legal entity holds treasury shares* – treasury shares are disregarded when calculating a stake for the purposes of the control criterion;<sup>10</sup>
- *the shares or rights are held by a nominee* – shares or rights are deemed to belong to a person on whose behalf the nominee acts.<sup>11</sup>

---

<sup>2</sup> Regulation 7.

<sup>3</sup> Note that the UK Regulations apply the "more than 50%" criterion, not the "50% or more" criterion which is applied in the US (see OFAC FAQs No. 401).

<sup>4</sup> Schedule 1(9) to Regulations.

<sup>5</sup> Fridman, R (On the Application Of) v HM Treasury [2023] EWHC 2657 (Admin).

---

<sup>6</sup> Schedule 1(2) to the Regulations.

<sup>7</sup> Schedule 1(3) to the Regulations.

<sup>8</sup> Schedule 1(12) to the Regulations.

<sup>9</sup> Schedule 1(5)(2)(b) to the Regulations; Schedule 1(4)(2) to the Regulations.

<sup>10</sup> Schedule 1(6) to the Regulations.

<sup>11</sup> Schedule 1(10) to the Regulations.

### III. CERTAIN IMPLICATIONS OF CONTROL IN REGULATOR'S GUIDANCE AND CASE LAW

#### Cases of Ownership/Control in Regulator's Guidance

Additional instances where a sanctioned person owns or controls an entity based on, among others, discretionary criterion (iii), may be derived from the guidance of OFSI, UK sanctions watchdog:<sup>12</sup>

- a sanctioned person has appointed a majority of the members of the administrative, management or supervisory bodies of an entity, who have held office during the present and previous financial year;
- a sanctioned person exercises dominant influence over an entity pursuant to an agreement entered into with that entity, or to a provision in its constitution, where the law governing that entity permits its being subject to such agreement or provision, or by operation of other circumstances without being the holder of the relevant contractual or constitutional right; or
- a sanctioned person is able to direct an entity in accordance with their wishes, by, e.g., controlling or using an entity's bank account.

#### Controlling an Individual

Generally, only an entity may be controlled. However, OFSI has specifically clarified that a sanctioned person controls an individual, *inter alia*, where such individual is being used to enter into transactions for the benefit of a sanctioned person:

*"For example, Person A (an individual) is not listed on OFSI's Consolidated List. However, your research shows that Person A is a family member or friend of designated Person B and there is evidence*

*that Person B is using Person A to enter into transactions. As Person B is in control of Person A, Person A is also subject to the same restrictions as designated Person B."*<sup>13</sup>

#### Application of Control Criteria to Trusts

Under OFSI guidance, a sanctioned person owns (controls) property regardless of whether they have a *legal* or *equitable interest* therein.<sup>14</sup> *I.a.*, this is relevant to ascertaining status of trust assets, where a legal interest is vested in the trustee and an equitable one in the beneficiary.

Trust type is important for the analysis. In a classic trust, its assets shall be blocked, if a beneficiary is designated. However, if a trust is a discretionary one, where (x) any distribution is dependent on the trustee's sole discretion, and (y) a beneficiary has no option to cause a trustee to make a distribution, then (z) prior to trustee's decision to make a distribution, a beneficiary shall be deemed to have no interest in trust assets whatsoever:

*"[U]nless and until [the power to appoint] is exercised in [favour of discretionary beneficiaries], [discretionary beneficiaries] have no proprietary interest in the trust property, either legal or equitable."*<sup>15</sup>

Accordingly, even if a beneficiary of a discretionary trust is designated, assets in such trust shall not be blocked, as the respective beneficiary holds no interest therein. However, there is no official guidance or case law confirming or contesting this position.

#### Broad Construction of Ownership or Control

*Mints v Banks Trust & Otkritie* is a recent landmark case, where the English courts discussed application of ownership or

---

<sup>12</sup> §4.1 Guidance for the financial and investment restrictions in Russia (Sanctions) (EU Exit) Regulations 2019, HM Treasury OFSI.

<sup>13</sup> *Ibid.*

---

<sup>14</sup> §4.1.3 Guidance for the financial and investment restrictions in Russia (Sanctions) (EU Exit) Regulations 2019, HM Treasury OFSI.

<sup>15</sup> *Anthony Mason, Discretionary trusts and their infirmities, Trusts & Trustees*, Volume 20, Issue 10, December 2014, pp. 1039-1054.

control criteria to National Bank Trust, which is 99% owned by the Central Bank of Russia. The Court of First Instance refused to recognise Mrs Nabiullina, the Head of the Central Bank of Russia, as a controlling person of National Bank Trust, because the ownership/control test only applies to ownership/control in personal capacity and not by virtue of public office.<sup>16</sup> The Court of Appeal disagreed with the restrictive interpretation and, by way of *obiter dictum*, pointed out that the Regulations define the control criteria as broadly as possible, which means that even the President of the Russian Federation may be deemed to control all Russian entities.<sup>17</sup>

This excessively broad interpretation caused the UK Government to issue guidance rejecting the Court of Appeal's approach of recognising officials as

controlling persons of Russian entities.<sup>18</sup> Nonetheless, this demonstrates that UK courts are eager to construe notion of ownership/control rather expansively.

#### IV. CONCLUSIONS

The Regulations leave ample room for administrative and judicial discretion when application ownership/control criteria. Relevant legislation seeks to cover all situations where a sanctioned person may have substantial influence on affairs of another person by utilising broad and open wording. Accordingly, whenever participating in a sanctions-related dispute or contemplating a transaction directly or indirectly involving a designated person, it is imperative to carry out a comprehensive analysis of ties to the respective designated person to avoid sanctions.

---

<sup>16</sup> PJSC National Bank Trust & Anor v Boris Mints & Ors [2023] EWHC 118 (Comm).

<sup>17</sup> Boris Mints & Ors v PJSC National Bank Trust & Anor [2023] EWCA Civ 1132.

---

<sup>18</sup> Ownership and Control: Public Officials and Control guidance, FCDO & OFSI, 2023.



**Anastasiya Rozeeva**  
Partner



**Dmitry Sokolov**  
Associate



**Grigory Dorofeev**  
Junior Associate

---

#### **Moscow**

10 Presnenskaya Embankment  
Block C, Naberezhnaya Tower

#### **Dubai**

The Opus by OMNIYAT  
Business Bay

#### **Abu Dhabi**

Addax Tower  
Al Reem Island

[info@whitesquarepartners.com](mailto:info@whitesquarepartners.com)  
[whitesquarepartners.com](http://whitesquarepartners.com)

