

Speedbrief:

Ownership, control and aggregation



The UK and the EU have recently issued new guidance in respect of aggregation, in the context of ownership and control, by persons subject to sanctions.

On 20 March 2022, the EU Commission issued guidance in the form of FAQs related to the Russia regime. However we would note that it does not specify whether the principles in respect of aggregation are limited to the Russia sanctions. On 23 March 2022, OFSI updated its general guidance on financial sanctions. Whilst we understand that this was issued specifically to address queries in respect of the Russia sanctions, it does not appear to be specific to this regime. The US guidance issued in August 2014 remains unchanged and are clarified in FAQs.

Below is a summary of the current position in respect of aggregation, across all three jurisdictions.

Jurisdiction	Ownership	Control	Additional Considerations	Guidance
UK	No aggregation. Aggregation should not be applied to holdings in an entity, unless the shares or rights are subject to a joint arrangement or where one party controls the rights of another.	No aggregation The UK guidance is not clear as to the application of aggregation in respect of control – see comments on ownership	The UK guidance notes that separate from aggregation of shareholding considerations, the tests in respect of ownership and control as they relate to (1) voting rights (2) the right to appoint or remove a majority of the board or (3) conducting the affairs in accordance with a designated persons wishes, will still apply. However the guidance is silent as to aggregation in respect of the above.	UK Financial Sanctions General Guidance
EU	Ownership should be aggregated	Control should be aggregated	Where joint control is established, it can be presumed that all assets of that entity are controlled by the designated persons unless it can be shown that specific assets are not so controlled. Where joint control over a group of companies as a whole is determined, then	EU FAQs

			<p>all subsidiaries in the group will be impacted.</p> <p>Where joint control is determined over a single group entity, only the subsidiaries of that entity are impacted, as opposed to companies in the wider group.</p>	
US	<p>Ownership will be aggregated.</p> <p>The US principles of aggregation remain unchanged and have been clarified via FAQs.</p> <p>Any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person (and so on down the chain of ownership).</p>	N/A	<p>OFAC FAQ 373 confirms that aggregation will also apply to entities subject to sectoral restrictions (an SSI entity)</p> <p>Although not explicitly covered in FAQs, current thinking is that aggregation for SSI entities should only occur where entities are designated pursuant to the same Directive.</p> <p>OFAC FAQ 538 confirms that aggregation of ownership (including voting interests) should be applied to determine whether a project is 33% or more owned by a person subject to Directive 4</p>	<p>REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY AND INTERESTS IN PROPERTY ARE BLOCKED</p>

The EU and UK guidance does go some way to addressing queries as to whether those authorities would consider aggregation in the same way that the US has done for a number of years. However, the guidance is far from clear and the difference in approach means that ownership and control, particularly across multiple jurisdictions or involving multiple parties is becoming ever more complicated to navigate.

Key contacts



Zia Ullah

*Partner and Head of
Corporate Crime and
Investigations*

T: +44 161 831 8454

M:+44 782 694 4979

ziaullah@

eversheds-sutherland.com



James Lindop

Product Group Head

T: + 44 20 7919 4718

M:+44 781 015 1278

jameslindop@

eversheds-sutherland.com



Ginger Faulk

Partner

T: +1 202 383 0981

gingerfaulk@

eversheds-sutherland.com



Victoria Turner

Principal Associate

T: + 44 161 831 8718

M:+ 44 786 715 5047

victoriaturner@

eversheds-sutherland.com



Robyn Brown

Senior Associate

T: +44 161 831 8704

M:+44 782 550 3652

robynbrown@

eversheds-sutherland.com