

Beyond the 50 Percent Rule: OFAC's Recent Private Equity Enforcement Action Shows Why Ignoring Indirect Sanctions Risk Can Be Costly

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Overview

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) recently announced an \$11.5 million settlement of an [enforcement action](#) against a U.S.-based private equity and infrastructure investment firm (the firm) for violations of U.S. sanctions in connection with an investment indirectly backed by a sanctioned individual. The action provides important guidance on OFAC's expectations regarding ownership, control, and indirect involvement by sanctioned persons, as well as the limits of relying on outside counsel when material facts are not fully disclosed. This is the latest in a series of similar enforcement actions by OFAC involving the same sanctioned individual and the complex trust structure he established to conceal his interest in U.S. investment funds, including a [similar case in June](#) involving a venture capital firm.

This latest case involved an investment in one of the firm's funds by an offshore entity ultimately owned by the trust associated with the sanctioned individual and his family. The investment was initiated prior to the imposition of sanctions on the individual but continued afterward. The firm primarily dealt with the sanctioned individual's nephew and representative. Outside counsel to the firm reviewed the trust arrangements and did not identify any clear role or ownership interest by the sanctioned individual, beyond being the original source of funds for the trust. The firm additionally received written confirmation from the investor entity that the sanctioned individual was "not affiliated with" it or with "any of the entities that directly or indirectly own it," and that neither the investor entity "nor any of its Affiliates or any holder of any beneficial interest in the Interest ... [nor] any Related Person, is or will be, nor will any amounts contributed by [the investor entity] to the Partnership be directly or indirectly derived from, invested for the benefit of, or related in any way to the activities of" a sanctioned person.

The matter underscores that U.S. sanctions compliance is not limited to a mechanical application of the "[50 Percent Rule](#)," but instead requires an assessment of practical control, source of funds, and economic reality. Under OFAC's 50 Percent Rule, any entity that is owned, directly or indirectly, 50% or more, individually or in the aggregate, by one or more blocked persons is itself considered blocked, even if the entity itself does not appear on OFAC's Specially Designated Nationals and Blocked Persons List. However, the 50 Percent Rule does not reflect the full extent of OFAC's reach. OFAC's blocking rules apply to any transactions or dealings that directly or indirectly involve the property or "interests in property" of a blocked person. The term "interests in property" is defined very broadly to include, among other things, "services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein,

present, future, or contingent.” In short, any involvement by a blocked person should be carefully evaluated under OFAC’s regulatory standards, whereas the firm’s analysis focused on formal ownership interests.

This case also highlights the pitfalls of overreliance on contractual representations, particularly when they are vaguely worded or otherwise not clear and complete, and when the available facts raise questions about the accuracy of the representations. OFAC found the firm “had reason to know that the attestation was inaccurate,” due to its knowledge of the previous involvement by the sanctioned person and the continuing involvement of his nephew and representative.

OFAC’s Core Findings

According to OFAC, the firm evaluated sanctions risk primarily as a formal ownership analysis, focusing on whether a sanctioned person directly or indirectly met the 50% ownership threshold. In doing so, OFAC found that the firm:

- Failed to sufficiently assess whether a sanctioned individual exercised practical control or decision-making authority over the relevant counterparty;
- Relied on outside counsel for sanctions advice without providing all material facts, including facts suggesting the sanctioned individual was the true source of funds and ultimate decision-maker;
- Proceeded with transactions despite red flags indicating that intermediaries or proxies may have been used to obscure the sanctioned person’s involvement; and
- Did not adequately escalate or probe these issues internally once such red flags became apparent.

OFAC emphasized that sanctions determinations turn on substance over form, and that reliance on formal ownership percentages alone is insufficient where facts suggest indirect involvement by a blocked person.

Substance Over Form: Practical Control and Economic Reality

A central lesson from this enforcement action is that OFAC looks beyond formal legal structures. While the 50 Percent Rule remains a critical compliance principle, OFAC indicated that:

- Sanctions risk assessments should consider who actually controls the entity, directs its activities, and, most importantly, provides the economic backing; and
- The use of opaque ownership structures, intermediaries, or proxies are red flags that trigger additional due diligence expectations.

In short, OFAC found that the firm proceeded, despite the apparent red flags, based on an incomplete or superficial analysis.

Reliance on Counsel Is Not Always a Defense

OFAC specifically addressed the firm’s reliance on outside counsel, noting that such reliance did not mitigate liability where counsel was not provided a complete and accurate factual record. In this case, the firm failed to disclose complete information suggesting indirect involvement by a sanctioned person.

OFAC reiterated that while legal advice can be a mitigating factor in some cases, it does not shield a company from enforcement if the company ignores red flags or withholds material information from its advisors. Ultimate responsibility for compliance remains with the U.S. person engaging in the transaction.

Aggravating and Mitigating Factors Considered by OFAC

Aggravating Factors

OFAC identified several factors that weighed against the firm, including:

- Awareness of facts indicating a sanctioned person's indirect involvement;
- Failure to adequately investigate or escalate those facts;
- Failure to voluntarily self-disclose to OFAC the apparent violations; and
- The sophistication of the firm and its access to compliance resources.

Mitigating Factors

OFAC also recognized mitigating considerations, including:

- Cooperation with OFAC during the investigation;
- Steps taken to enhance sanctions compliance following the identified conduct; and
- The absence of prior OFAC violations.

These factors influenced OFAC's enforcement posture and penalty determination but did not eliminate liability.

Broader Implications Across Industries

Although this matter involved a financial investor, OFAC's guidance applies broadly. Knowledge of a counterparty's ownership and control structure is fundamental to sanctions compliance in all industries, including manufacturing, insurance, energy, technology, logistics, and professional services.

OFAC expects parties to understand not only who they are contracting with, but also who stands behind the counterparty economically and operationally.

Key Compliance Takeaways for Companies

Enhanced Due Diligence Is Critical

Companies should implement enhanced measures where risk indicators are present, including:

- Beneficial ownership analysis beyond formal shareholdings;
- Source-of-wealth and source-of-funds reviews;
- Assessment of governance rights and decision-making authority; and
- Scrutiny of intermediaries and financing arrangements.

Escalation and Documentation Matter

When red flags arise, companies should:

- Escalate issues to compliance and legal leadership;
- Document investigative steps and risk assessments; and
- Reassess transactions in light of evolving facts or sanctions developments.

Provide Advisors With a Complete Factual Picture

To rely meaningfully on legal or compliance advice, companies must share all material facts, including uncomfortable or ambiguous information. Selective disclosure may undermine both the advice received and any potential mitigation credit.

Conclusion

This enforcement action reinforces that U.S. sanctions compliance is grounded in economic reality and practical control, not solely formal ownership thresholds. OFAC expects companies to identify, investigate, and respond to indicators of indirect involvement by sanctioned persons, to conduct enhanced due diligence when warranted based on risk indicators, and to ensure that advisors are provided with a full and accurate factual record. Failure to do so can result in enforcement exposure.

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