Observatoire ARGA

ARGA Atlas

SANCTIONS RISKS AND SECONDARY SANCTIONS FOR PRIVATE INVESTORS

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Purpose of the document:

To explain systematically how sanctions regimes, and especially secondary sanctions, affect private investors, beneficial owners, family offices, holding structures, funds, and investment platforms; to clarify the distinction between primary and secondary sanctions, between direct breach of a sanctions regime and enhanced compliance risk; to examine the significance of ownership and control, beneficial ownership, due diligence, de-risking, and "reputational contagion" in the cross-border investment environment; and to propose a practical model of legal and compliance protection for private investors dealing with assets, counterparties, and jurisdictions presenting heightened sanctions exposure.

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY

For a private investor, sanctions risk is no longer simply a question of whether his or her own name appears on a sanctions list. Modern practice shows that decisive importance attaches not only to direct prohibitions, but also to chains of ownership, structures of control, the nature of transactions, the involvement of intermediaries, a bank's own risk assessment, the sector concerned, the geography of the asset, and even the way a counterparty is described in compliance systems.

For the private investor, this means that sanctions risk exists on at least three levels. The first level is direct legal risk arising from breach of a sanctions regime. The second is secondary sanctions risk, especially in the U.S. system, where a non-U.S. person or foreign financial institution may be exposed to restrictive measures for certain significant transactions involving sanctioned persons. The third is compliance and market risk, where even a formally permissible structure becomes "unacceptable" to banks, brokers, fund administrators, payment providers, or business partners. As a result, an investor

may lose access to payment infrastructure, custody, a transaction, or liquidity even without formal designation.

The particular feature of secondary sanctions is that they do not operate as an ordinary universal prohibition binding everyone directly. Rather, they function as a form of extraterritorial pressure through the threat of losing access to a market, a financial system, or dollar infrastructure. This makes even a "remote" private investor an object of heightened scrutiny if he or she invests through banks, funds, special purpose vehicles, trusts, or joint ventures connected with high-risk sectors or jurisdictions.

At the same time, both European and British practice show that, even outside the classic U.S. model, sanctions risk is increasingly tied to ownership and control analysis, due diligence, and the obligation of market participants to identify hidden connections with sanctioned persons. For a private investor, this means that sanctions protection must be built not around the single idea that "my name is not on a list," but around a full risk architecture: ownership structure, counterparty chain, banking infrastructure, the nature of the asset, jurisdictional exposure, dollar nexus, secondary sanctions exposure, ownership and control screening, contractual protections, and exit strategies from high-risk relationships. Otherwise, even a formally "clean" investor may find that legal permissibility no longer protects against de facto financial isolation.

2. WHY SANCTIONS RISKS FOR PRIVATE INVESTORS NO LONGER BOIL DOWN TO "AM I ON A LIST OR NOT?"

The most primitive, and therefore most dangerous, mistake is to reduce sanctions analysis to a search against the SDN List, the UK Consolidated List, or the EU sanctions list. That is no longer enough. Modern sanctions compliance is concerned not only with whether a person is formally designated, but also with how a transaction is structured, what currency is used, which financial channels are involved, what counterparties appear in the chain, and whether the transaction creates a meaningful nexus to a particular sanctions regime.

For the private investor, this matters especially because investment activity is almost always mediated through legal and financial structures. An asset may be held through a holding company, a trust, a special purpose vehicle, a fund vehicle, a nominee structure, a family office, or a layered beneficial ownership chain. Formally, none of those elements is required to appear on a sanctions list. But if a blocked person, controlling influence, significant sanctions-sensitive sector, or high-risk jurisdiction enters the chain, the legal and compliance picture changes immediately.

The same is true in the European and British context. Modern sanctions guidance and sanctions-help resources are built on the assumption that private operators must verify not only their own "cleanliness," but also the broader environment of their transactions. In other words, the contemporary sanctions problem is not merely personal. It is structural. Sanctions law has very little patience for the investor who insists on seeing only himself and never the chain around him.

3. WHAT SECONDARY SANCTIONS ARE AND HOW THEY DIFFER FROM PRIMARY SANCTIONS

Primary sanctions generally prohibit certain conduct by persons falling directly within the jurisdiction of a sanctions regime. In the U.S. system, that classically means U.S. persons and transactions with a U.S. nexus.

Secondary sanctions operate differently. They create exposure for non-U.S. persons, especially where those persons engage in certain significant transactions or provide material support to sanctioned persons or sectors. This is why secondary sanctions are commonly understood as a tool of extraterritorial pressure rather than simply another domestic prohibition.

In practical terms, this means the following. A private investor may be neither a U.S. person nor resident in the United States, and may not even invest directly in the United States, yet still face sanctions exposure if the structure of the deal passes through dollar infrastructure, a correspondent account, a Western custodian, a foreign bank, or a high-risk counterparty chain connected with a sanctioned person. In a number of official U.S. statements, foreign financial institutions are explicitly warned of the risk of sanctions where they knowingly conduct or facilitate significant transactions involving blocked persons.

At the same time, secondary sanctions are not a single, uniform category. They depend on the specific legal authority, program, and determination. For that reason, defense and compliance work cannot treat them as a vague atmospheric threat. One must always examine which program is at issue, what counts as a "significant transaction" in that program, what the relevant official guidance says, and whether the investor is facing real legal exposure or merely a market reaction driven by fear. A great many supposed sanctions experts collapse this distinction and then proceed to speak with the serene confidence of fortune-tellers in expensive suits.

4. THE PRIVATE INVESTOR AS A CARRIER OF DIRECT AND INDIRECT SANCTIONS RISK

Direct risk for the private investor arises where the investor personally undertakes a prohibited transaction, holds blocked property, deals with a designated person, or participates in a structure that is itself treated as blocked because of ownership or control. In that setting, the sanctions issue is relatively straightforward, at least by the standards of this area of law, which is saying very little.

Indirect risk is broader and, in practice, often more destructive. It arises where the investor does not directly violate a sanctions regime, but is involved in such a structure of ownership, control, or financing that banks, fund administrators, brokers, payment providers, or auditors treat it as presenting unacceptable sanctions exposure. Customer due diligence, beneficial ownership review, understanding the nature and purpose of the relationship, and ongoing monitoring all become part of how the investor is profiled.

For private investors from the CIS region, and for persons whose assets or business interests are connected with Russia, Belarus, Iran, or other sanctions-sensitive jurisdictions, this logic is particularly severe. Even without a direct violation, the investor may face refusal to onboard, frozen transactions, enhanced due diligence, source-of-wealth scrutiny, reputational escalation, and transaction refusal. In this sense, sanctions risk consists not only of what is prohibited by law, but also of what the financial infrastructure no longer agrees to tolerate. Secondary sanctions, in practical life, often begin long before anyone uses the formal term.

5. OWNERSHIP AND CONTROL, BENEFICIAL OWNERSHIP, AND THE PROBLEM OF A "HIDDEN" SANCTIONS FOOTPRINT

Modern sanctions compliance is built on the assumption that the formal shell of a transaction proves very little if the real ownership or control lies elsewhere. For the private investor, this means that nominee structures, trust structures, family office arrangements, holding layers, or fund vehicles can no longer be treated as neutral privacy tools. They become objects of legal interpretation in their own right.

If a bank or regulator concludes that a designated person exercises ownership or control, directly or indirectly, a structure may be treated as blocked or high-risk even where the designated person's name does not appear in the formal ownership records. For a private investor, that means complexity does not automatically reduce sanctions risk. Sometimes it increases it, precisely because complexity itself may look like evidence of masking.

The concept of beneficial ownership is central here. It is not enough to show who appears on the shareholder register. One must be able to explain who actually controls the structure, who benefits from it, who can influence decisions, and whether any sanctioned person or high-risk actor sits behind the formal chain. Financial institutions do not generally reward ambiguity in this area. They punish it. Usually very politely, through refusal emails and delayed settlements, which is still punishment, just in business casual.

6. BANKING COMPLIANCE, DE-RISKING, AND REAL-WORLD CONSEQUENCES WITHOUT FORMAL DESIGNATION

The most destructive part of the sanctions environment for a private investor often lies not in the legal text of a sanctions instrument, but in the behavior of financial intermediaries. Banks, brokers, custodians, fund administrators, and payment providers increasingly operate as first-line actors in sanctions implementation. They conduct their own screening, make their own risk assessments, and frequently choose to avoid any relationship that appears too difficult, too politically exposed, or too expensive to monitor.

For the investor, that means de-risking becomes an independent threat. The bank may never assert that the client has violated the law. It is enough for the institution to decide that the cost of sanctions screening, ownership review, ongoing monitoring, and reputational uncertainty has become too high. The result may be account closure, transaction blocking, refusal to onboard, delay in settlement, refusal of brokerage execution, or the withdrawal of custody services.

This is one of the most unpleasant aspects of sanctions practice. Legally, the investor may still be "clean." Financially, however, he may already have become toxic. And it is much harder to challenge that reality than to contest a formal designation. Against a sanctions listing, one at least has legal procedures, licensing logic, delisting frameworks, and judicial review. Against banking fear, one mainly has structure, documentation, and the quality of one's compliance narrative. It is a brutally efficient system: one form of risk can be appealed, the other simply closes the door.

7. THE EU, THE UNITED KINGDOM, AND THE UNITED STATES: DIFFERENT APPROACHES TO SANCTIONS RISK

The American model develops secondary sanctions and extraterritorial pressure through the financial system more aggressively than the European one. The practical significance of U.S. nexus, dollar clearing, foreign financial institutions, and significant transactions is much higher. For the private investor, connection with U.S. financial channels often greatly increases both regulatory and practical exposure.

The European Union, by contrast, formally adopts a more restrictive approach toward the extraterritorial application of third-country sanctions. At the same time, the EU actively develops its own restrictive measures, asset freezes, sectoral sanctions, and operator guidance. The logic is not that Europe rejects sanctions control as such. It rejects the extraterritorial application of someone else's sanctions while strengthening its own sanctions architecture.

The British model sits somewhere between the two. OFSI operates as the central authority for UK financial sanctions implementation, and the practical focus on ownership and control issues has become increasingly pronounced. For the private investor, this means that UK exposure cannot be understood merely through a formal search of designated persons. It requires continued analysis of how regulators and firms may interpret ownership, control, and good-faith due diligence in practice.

8. A PRACTICAL PROTECTION MODEL FOR THE PRIVATE INVESTOR

A strong defensive model for the private investor has to be built before a conflict with the sanctions infrastructure occurs, not after. The first layer is structural review. The investor must understand in advance whether there are blocked, high-risk, or politically exposed persons anywhere in the ownership chain; which jurisdictions and currencies are involved; whether there is U.S. nexus; and who the administrator, custodian, correspondent bank, and service providers are.

The second layer is documentary defense. That means source of wealth, source of funds, explanation of beneficial ownership, governance map, sanctions screening results, and legal rationale for the transaction. Risk-based compliance has to be built into decision-making architecture rather than bolted onto it afterward as an embarrassed apology.

The third layer is transaction discipline. The private investor must examine whether an otherwise ordinary operation becomes sanctions-sensitive because of the identity of the counterparty, the sector concerned, the route of payment, the use of correspondent accounts, or sanctions-sensitive intermediaries. At this stage, practical pathway analysis matters as much as legal analysis: through which bank does the payment move, who will screen it first, where is the likely compliance choke point, and what part of the infrastructure is most likely to panic.

The fourth layer is defensive optionality. The investor should already have a plan for escalation: alternative lawful banking routes, restructuring options, disentanglement from high-risk co-investors, legal opinions for service providers, challenge strategy against de-risking, and, where necessary, migration of the asset or vehicle into a less exposed structure. Passive ownership is no longer a persuasive excuse in the sanctions field. Passivity in a sanctions environment is a remarkably expensive hobby.

9. CONCLUSION

Sanctions risks and secondary sanctions for private investors should not be understood as a narrow problem of "high geopolitics" irrelevant to private wealth. On the contrary, private investors, family offices, beneficial owners of holding structures, fund participants, and holders of cross-border assets increasingly find themselves at the intersection of sanctions regimes, beneficial ownership scrutiny, de-risking, banking infrastructure controls, and extraterritorial pressure.

The main practical conclusion is brutally simple. For a private investor today, it is no longer enough merely not to be listed. One must also be able to show that the ownership structure is transparent, that the transaction does not create prohibited or sanctionable exposure, that the counterparty does not carry a hidden control problem, and that the banking and compliance infrastructure will not perceive the deal as unacceptable. Otherwise, sanctions risk will not operate as a neat legal mechanism, but as a blunt method of exclusion from the financial system. And, as usual, it will happen at the most inconvenient possible moment, as though the market had taken a personal interest in bad timing.

APPENDIX A. TERMINOLOGY

Primary sanctions
Restrictions that directly prohibit certain conduct by persons falling within the jurisdiction of the relevant sanctions regime, for example U.S. persons in the U.S. system.

Secondary sanctions
Sanctions measures aimed at exerting pressure on non-U.S. persons or foreign financial institutions for certain significant transactions or support involving sanctioned persons or sectors.

Ownership and control
An approach under which legal significance attaches not only to formal title, but also to actual or indirect control over a person or structure.

Beneficial ownership
The concept of ultimate real ownership or control, central to customer due diligence and sanctions review.

De-risking
The practice by financial institutions of restricting, terminating, or refusing relationships or transactions viewed as too risky from the standpoint of AML/CFT, sanctions, or reputational exposure.

APPENDIX B. MATRIX OF SANCTIONS RISKS FOR PRIVATE INVESTORS

Criterion	How it appears	Legal significance
Direct exposure to a sanctions regime	The investor or asset is directly listed, or the transaction is directly prohibited	Creates direct legal prohibition and enforcement risk

50% / blocked ownership exposure	Counterparty or vehicle is owned directly or indirectly by blocked person(s)	May result in blocking even without separate listing
Secondary sanctions exposure	There is a risk of significant transaction or facilitation in favor of blocked persons	Creates extraterritorial pressure, especially through financial infrastructure
Ownership and control ambiguity	Formal owner differs from the person exercising actual control	Increases the risk of freeze, de-risking, and refusal of service
U.S. nexus	Dollar payments, U.S. financial channels, U.S. persons, or U.S. services are involved	Greatly increases OFAC exposure
Banking / market de-risking	Bank, broker, or custodian considers the relationship too risky	May lead to refusal, blocking, delay, or forced exit without formal designation
Documentation gap	Unclear source of funds, weak BO documentation, poor compliance narrative	Escalates compliance risk even without a direct legal prohibition
EU/UK/U.S. compliance mismatch	A structure looks acceptable in one system but problematic in another	Requires jurisdiction-specific structuring and review

OFFICIAL SOURCES

1. **OFAC, A Framework for OFAC Compliance Commitments** - official Treasury approach to sanctions compliance for U.S. and foreign entities.

2. **U.S. Treasury / OFAC materials on Russia-related sanctions under E.O. 14024** - official statements regarding exposure of foreign financial institutions for significant transactions involving blocked persons.

3. **Treasury materials on sanctions enforcement** - confirmation that OFAC may impose civil penalties on a strict liability basis.

4. **Treasury materials on blocked entities and 50 percent ownership** - official approach to entities owned 50% or more by blocked persons.

5. **Treasury De-Risking Strategy** - official discussion of customer due diligence, beneficial ownership, and ongoing monitoring.

6. **OFSI, UK Financial Sanctions General Guidance** - the basic official framework for UK financial sanctions implementation.

7. **UK Government materials on the ownership and control test** - official discussion of practical problems in applying ownership and control rules.

8. **European Commission sanctions resources and helpdesk materials** - official tools on sanctions due diligence for operators.

9. **European Commission consolidated FAQs on Russia and Belarus sanctions** - current official guidance on EU restrictive measures.

10. **Council of the EU materials on the types and rationale of EU sanctions** - official explanation of the structure of EU sanctions.

11. **European Commission materials on the Blocking Statute and extra-territorial application of third-country laws** - official EU position in the relevant context.

12. **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct** - the baseline RBC framework.

13. **OECD Responsible Business Conduct for Institutional Investors** - official due diligence framework specifically for investors.