

Differences between AML rules and sanctions rules on ultimate beneficial owners 2/35/23



PwC Legal assistant associate
Tereza Vagentroca

Identifying the ultimate beneficial owner (UBO) of a legal entity is key to securing compliance with the anti-money laundering (AML) rules and making sure that no business is done with sanctioned persons. Yet there are some other aspects to be considered because the rules vary as to how a UBO is defined in each particular case. This article explores how these differences can be detected and applied for daily purposes to ensure compliance with the AML rules and the sanctions rules.

The AML rules have evolved over more than 30 years and reached a single definition of UBO across the EU. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing states that the UBO for legal entities is a person holding a 25% interest in the entity or 25% plus one share. This threshold has been chosen because it provides a person with sufficient scope to control the entity. The 25% control applies to both direct and indirect control, so we should try to reach the UBO also where the entity is controlled through a structure.

Modelled on EU rules, the Latvian Anti Money Laundering and Counter Terrorism and Proliferation Financing Act, too, sets a 25% threshold, and the Latvian rules define the UBO as someone who directly or indirectly controls an entity. It's important to note that the UBO includes the entity's founder, agent or manager. UBO identification helps companies evaluate their potential business risks and money laundering risks and identify countries linked with their prospective or existing partners.

The EU has targeted its sanctions at Russia for its aggression in Ukraine since 2014. Annex I to Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine names the sanctioned persons, any kind of business with them is prohibited, and additional restrictions are imposed. It's important to note that various amending documents have made changes that affect not only the sanctioned persons themselves but also any persons that are related to them, as the sanctions rules make it illegal to directly or indirectly provide any funds or business resources to the sanctioned individuals, entities, units and structures. The sanctions rules don't use the term 'UBO', so in each particular case we need to assess whether terminating business with the sanctioned persons will guarantee at once that they don't receive funds indirectly. It's always important to evaluate any links the parties to a contract have with the sanctioned persons and the extent of their influence in particular companies in order to verify that no financial or business resources are made available to the sanctioned persons even indirectly.

Clearer rules are available on questions about doing business with state-controlled companies where the Russian state is the UBO. Specifically, it's illegal to provide any direct or indirect assistance, including funding and financial assistance or any other benefit to companies that are at least 50% directly or indirectly controlled by the Russian state, or in certain cases, if 50% of property is owned by a Russian individual or entity. Of course, each particular situation has different exclusions. This is just an example from the current rules setting a particular threshold for recognising a controlled company. It's always necessary to assess whether there is a link in the light of other clauses and to bear in mind that the 50%

threshold applies to particular cases, rather than being applicable in general.

Being linked with sanctioned persons or jurisdictions may strongly affect a company's reputation, so it's important to evaluate any possible link early and make decisions based on an assessment of potential risks.

It's also important to remember that the AML rules and the sanctions rules are two different areas. The sanctions rules aim to negatively affect the Russian economy and to apply pressure on the Russian elite in order to help Ukraine maintain its territorial independence. The AML rules have wider goals - to prevent the circulation of money that is obtained and used illegally. Despite these different objectives, in both cases it's important to identify persons that directly or indirectly control the companies you are planning to do business with, and to find out whether those persons are subject to restrictions imposed by the sanctions.