



## Answers to pre-submitted questions

OFSI Legal Sector Engagement Forum  
4<sup>th</sup> July 2023 10:00-11:00AM

<p>Which definition of domiciled does OFSI use?</p>	<p>OFSI uses the dictionary definition the country that a person treats as their permanent home, or lives in and has a substantial connection with</p>
<p>What is OFSI's position on the requirement for firms to carry out due diligence on counterparties?</p>	<p>OFSI does not prescribe the level or type of due diligence to be undertaken to ensure compliance with financial sanctions.</p> <p>Where we determine a breach to have occurred, OFSI will take into account any relevant efforts and checks undertaken. The extent to which the efforts and checks undertaken are appropriate and reasonable in a given case will inevitably depend on the facts of the case, the degree of sanctions risk of the relevant entities and the nature of the transaction.</p> <p>Where relationships or activity is ongoing, OFSI expects that due diligence is, and assessments are, reviewed at appropriate times. Ownership and control is not static and OFSI's consideration of the due diligence undertaken will consider the regularity of checks, and/or ongoing monitoring where appropriate.</p> <p>OFSI will consider whether the level of due diligence conducted was appropriate to the degree of sanctions risk and nature of the transaction. The nature of a person's contractual or commercial relationship with the entity will also be relevant to OFSI's consideration of the appropriateness of measures undertaken. OFSI would expect to see evidence of a decision making process that took account of the sanctions risk and considered what would be an appropriate level of due diligence in light of that risk. OFSI would usually expect these</p>

	<p>decisions to be made by reference to an internal framework or policy, but recognises that there is no one-size fits all approach. OFSI expects careful scrutiny of information obtained as part of any ownership and control assessments, particularly where efforts appear to have been made by designated persons to avoid relevant thresholds.</p> <p>Further information on OFSI’s position can be found in OFSI’s Enforcement Guidance.</p>
<p>What is OFSI’s appetite for issuing penalties for a breach of the sanctions regime, where a counterparty was not identified as a designated person due to a failure to carry out due diligence?</p>	<p>When deciding what enforcement action to take, OFSI will assess the facts to decide on an outcome that is fair, proportionate and best enforces the purpose of the regime. To ensure OFSI’s response is proportionate, we will assess overall how severe the breach is and the conduct of the individuals involved. A relevant factor in this assessment will include whether the person committing the breach knew or suspected that their conduct amounted to a breach of financial sanctions. Broadly, the more aggravating factors we see, the more likely we are to impose a monetary penalty.</p> <p>OFSI’s revised Enforcement Guidance introduces Ownership and Control as a specific case factor and potential aggravating factor from 3.22 onwards.</p> <p>3.24 in particular states that OFSI will consider appropriate due diligence conducted on the ownership and control of an entity to be a mitigating factor where the ownership and control determination reached was made in good faith and was a reasonable conclusion to draw from such due diligence. OFSI may also consider a failure to carry out appropriate due diligence on the ownership and control of an entity, or the carrying out of any such due diligence in bad faith, as an aggravating factor. The weight to be attributed to the mitigating or aggravating factor (as applicable) will be assessed on a case-by-case basis.</p>