

CLIENT ALERT

# After the Barking, OFSI Bites: OFSI Issues Fines of over £20 Million against Standard Chartered Bank

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The UK Office of Financial Sanctions Implementation (“**OFSI**”) has issued its fourth and largest financial penalty to date.

On 31 March 2020, OFSI announced that it had issued two financial penalties of £7,693,233.50 and £12,778,576.33 against Standard Chartered Bank (“**Standard Chartered**”), a total of £20,471,809.83.

Despite Standard Chartered having received a discount of 30% as a result of making voluntary disclosures, the total fine is the highest ever imposed by OFSI since it was established in 2016.

### **Breach of financial sanctions in relation to Ukraine**

The penalties were issued for breaches of Article 5(3) of EU Council Regulation 833/2014 and Regulation 3B of The Ukraine (European Union Financial Sanctions) (No.3) Regulations 2014.

- In summary, Article 5(3) prohibits any EU person from making loans or credit available to sanctioned entities.
- Article 5(3)(a) creates an exemption from the Article 5(3) prohibition. The exemption requires that the financed trades concern goods coming in or out of the EU.

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### Loans to Denizbank A.Ş.

Between 8 April 2015 and 26 January 2018, Standard Chartered made 102 loans to Denizbank A.Ş. During this time, Denizbank A.Ş. was majority owned by Sberbank, a Russian entity that was subject to restrictive measures under the EU Ukraine (Sovereignty and Territorial Integrity) regime. Seventy of these loans, with an estimated transaction value of over £266 million, did not have an EU nexus and therefore did not qualify for the Article 5(3)(a) exemption. Of these 70 loans, 21 were made between 7 April 2017 and 26 January 2018. It was in respect of these 21 loans, which had a total value of £97,484,808.71, that OFSI issued the penalties, considering them to be the 'most serious'.

Penalties levied by OFSI are calculated as the greater of £1million, or 50% of the total value of the breach. Where OFSI assesses a case to be 'most serious', as it did here, it may make reductions of up to 30% for voluntary disclosure. In this case, that reduction amounted to £11,028,190.17.

OFSI found that Standard Chartered had introduced dispensations, which enabled it to make loans to Denizbank A.Ş. where it considered that the Article 5(3)(a) exemption applied. OFSI assessed that these dispensations had not been implemented appropriately, and that the loans made to Denizbank A.Ş. were therefore not exempt. Consequently, the loans were in breach of the EU Regulations. These breaches extended over a long period of time, leading Standard Chartered to continually make new loans to Denizbank A.Ş.

### Ministerial review reduces fine

Standard Chartered exercised its right to ministerial review of the proposed penalty under section 147 of the Policing and Crime Act 2017. Upon review of Standard Chartered's investigative report, the ministerial review found that the bank did not wilfully breach financial sanctions in relation to Ukraine, had acted in good faith, and had intended to comply with the relevant restrictions. Further, the bank had fully cooperated with OFSI and had taken remedial steps following the breach. Consequently, after review, the original penalty amounts of £11,900,000 and £19,600,000 were reduced to £7,693,233.50 and £12,778,576.33.

This is not the first time that OFSI's original penalty amount has been reduced following the use of the ministerial review process. In October 2019, the original fine of £300,000 issued by OFSI against Telia Carrier UK Ltd ("Telia") in respect of breaches of financial sanctions in relation to Syria was reduced to £146,341 following ministerial review.

### A sign of things to come?

As an enforcement agency, OFSI continues to mature. It is perhaps unsurprising that OFSI's biggest fine has been levied against a financial institution, which marks a return to the focus of its earlier cases. Nonetheless, the size of the fines levied against Standard Chartered could be viewed as a sign of intent from OFSI, which has previously come under fire for lacking teeth in terms of using its enforcement powers. Until 2020, the largest fine imposed by OFSI was £146,341,

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which was issued against communications provider Telia in October 2019. Telia's fine was only the third financial penalty ever issued by OFSI, with the other two fines against Raphaels Bank and Travelex coming in at just £5,000 and £10,000, respectively, for breaches of financial sanctions in relation to Egypt. However, the size of the Standard Chartered penalty has demonstrated that OFSI is not afraid to use its powers where necessary, and could be indicative of a new, more aggressive, approach.

### Cooperation

In its penalty report, OFSI reiterated the importance both of companies coming forwards to cooperate, and of voluntary disclosure. This is in line with the Financial Sanctions Guidance issued by OFSI, which states that OFSI will take a full and prompt disclosure of a breach into account when considering the course of action to take in response.

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The potential benefits and advantages of making a voluntary disclosure ought therefore to be given careful consideration, and should not be underestimated, when companies are faced with sanctions breaches.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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