

**Alert | White Collar Defense & Special Investigations/  
Export Controls & Economic Sanctions**



November 2019

## **OFSI Finds Its Teeth While OFAC Continues to Enforce Against Non-U.S. Corporates**

*UK sanctions monitor imposes its highest monetary penalty to date, while its U.S. counterpart agrees to settle with a British bank for an even \$4 million.*

The UK's Office of Financial Sanctions Implementation (OFSI), the body tasked by the UK Treasury to administer and enforce financial sanctions in the UK, has issued its biggest monetary penalty to date, against the UK arm of an international telecommunications company for breaching sanctions imposed on a Syrian entity.

The £146,341 monetary penalty was issued against Telia Carrier UK Limited (Telia), which is said to have 'indirectly facilitated international telephone calls to SyriaTel', an entity subject to EU sanctions under the Syria (European Union Financial Sanctions) Regulations 2012.

In fact, OFSI intended to impose a much larger penalty of £300,000. However, Telia exercised its right to request that the penalty be reviewed by a government minister under Section 147 of the Policing and Crime Act 2017.

Having carried out his review, John Glen MP, Economic Secretary to the Treasury, upheld OFSI's decision to impose a penalty but substituted the £300,000 with the lesser but still significant amount of £146,341. The nearly 50% reduction of the proposed penalty was based on information advanced by Telia which, for

reasons that are not clear, was not available to OFSI at the time the original penalty was imposed but which significantly reduced the value of the breaches.

This is only the third fine imposed by OFSI since the office was established in April 2016. The previous two fines, imposed earlier this year against Raphaels Bank (£5,000) and Travelex (£10,000), respectively, pale in significance.

None of the three fines begins to compare to the enforcement activity of the well-established and longer functioning U.S. Office of Foreign Assets Control (OFAC) which has imposed a total of £1.2 billion in fines in 2019 alone.

### **The British Connection**

In September 2019, OFAC reported it had agreed to a settlement with UK-based British Arab Commercial Bank plc (BACB), which has no offices or business presence in the U.S., for 72 violations of U.S. sanctions in relation to Sudan. The transactions at issue did not enter the U.S. financial system, but did utilize U.S. financial institutions. The violations, totalling \$190,700,000 in value, which were considered egregious and were not voluntarily disclosed by BACB to OFAC, led to a mammoth OFAC civil penalty of £381,400,000 which was only reduced after the BACB's bank regulator in the UK intervened. OFAC concluded that to impose such a fine would have a disproportionate impact on BACB, and agreed in a settlement agreement to suspend all but \$4 million of the penalty on the basis that BACB fulfils a number of ongoing compliance commitments.

While OFAC's settlement demonstrates a willingness to show leniency, the case provides more evidence of OFAC's inclination to make examples of non-U.S. legal entities that violate OFAC economic sanctions.

Although such extra-territorial reach and vast penalties may be a long way off for OFSI, its fine imposed on Telia is perhaps an indication that the UK is ready to impose, like OFAC, more significant fines in appropriate cases – but are more on the way?

OFSI's annual review, released earlier this month, suggests it has a healthy, albeit reduced workload when compared to the previous year. The review reveals OFSI received 99 reports of suspected sanctions breaches with a reported value of £262 million, including an increase in reported breaches under the Libyan sanctions regime and an overall increase in the value of breaches reported for sanctions regimes targeting Russia. This is compared to 122 reported breaches the previous year.

Combined with these trends and the publication of OFSI's Telia fine, we recommend businesses review their own sanctions policies to ensure they do not find themselves falling foul of the regulations. This is particularly important in light of the broadly defined rules and concepts and the potential impact on businesses operating internationally.

### **UK Sanctions Rules: Key Concepts, Compliance and Enforcement**

Currently, the majority of UK sanctions provisions are a product of EU financial sanctions imposed by EU regulations, which have direct effect in the UK. Through its own domestic statutory instruments, such as the Syria (European Union Financial Sanctions) Regulations 2012 (“the Syria sanctions regime”) as referred to above, the UK further clarifies those rules and imposes penalties for violations.

Broadly speaking, the EU regulations prohibit all persons subject to EU (including UK) jurisdiction from dealings in relation to those ‘designated’ (meaning named, i.e., targeted by sanctions) by the EU regulation.

For example, the Syrian sanctions regulation prohibits all persons subject to EU (including UK) jurisdiction from making **funds** available to or for the benefit of a designated person or making **economic resources** available to such persons. This is known as an **Asset Freeze** and is the most common form of financial sanction.

The relevant key terms are broadly defined.

**‘Funds’** - This includes cash, bank deposits, debt obligations, credit, interest and dividends.

**‘Economic Resources’** – This includes tangible and intangible, movable and immovable assets which are not funds but may be used to obtain funds, goods or services.

The fine against Telia was imposed for indirectly facilitating international telephone calls to the sanctioned entity, resulting in both funds and economic resources indirectly available to that entity. OFSI’s report highlights the broad definition of **Economic Resources**, and explains that the Telia case ‘illustrates that [the concept] can cover a wide variety of tangible and intangible resources’.

### **Reporting Obligations**

The EU financial sanctions regimes impose a general obligation on all natural and legal persons, entities, and bodies to supply ‘as soon as practicable’ any information that would ‘facilitate compliance’ with the regulations. This requirement applies to all natural and legal persons, entities and bodies in the UK or under UK jurisdiction, and not just to credit or financial institutions.

In addition, specific obligations apply to ‘relevant institutions’ which include those regulated under the Financial Services and Markets Act 2000, credit institutions, and currency exchange businesses. The same specific obligations apply to ‘relevant businesses or professions’ including auditors, casinos, estate agents, lawyers, and accountants.

Those falling into one of these two categories must report to OFSI as soon as reasonably practicable if they know, or have reasonable cause to suspect, that a person: (i) is a designated person, or (ii) has committed a sanctions breach and the information on which the knowledge or suspicion is based came to it in the course of carrying on its business. In addition, if the designated person is also a customer of the business/profession, then the report must also include the nature and amount or quantity of any funds or economic resources held for the customer.

Failure by a relevant institution or a relevant business or profession to comply with these obligations is a criminal offence which could result in a significant monetary penalty or even criminal prosecution, and individuals convicted of such offences can face up to seven years imprisonment.

Reports require specific information including an outline of the circumstances which led to the reporting parties ‘knowledge or suspicion’. They can therefore be lengthy and are made by completing a specific form available through the OFSI website, which can then be submitted by email, along with any associated documents.

## International Reach and Co-operation

OFSI states that breaches do not have to occur in the UK for its authority to be engaged. All that is required is a connection to the UK – or a ‘UK nexus’ – such as a UK company working overseas or directing action overseas.

If OFSI considers that conduct may not breach UK sanctions but may breach sanctions in another jurisdiction, it may share details with other relevant authorities.

## Approach to Compliance and Enforcement

In its guidance, OFSI states that its approach is summarised by the following four key features of its ‘compliance and enforcement model’:

1. **Promotion**, through the publication of financial sanctions and engaging with the private sector.
2. **Enabling** compliance by providing guidance.
3. **Responding** to non-compliance by disrupting attempted breaches and tackling breaches effectively.
4. **Changing** behaviour, through the impact of compliance and enforcement action.

In approaching potential breaches of financial sanctions, OFSI’s guidance states that they will follow a ‘case assessment’ procedure which will include consideration of the seriousness of the breach, whether it was voluntarily disclosed, and the level of co-operation with any investigation before taking one of the following actions:

1. Issuing correspondence requiring details of how a party proposes to improve their compliance practices;
2. Referring regulated professionals or bodies to their relevant professional body or regulator in order to improve their compliance with financial sanctions;
3. Imposing a monetary penalty if satisfied, on the balance of probabilities, that a sanctions violation has been committed; or
4. Referring the case to law enforcement agencies for criminal investigation and potential prosecution, and those found guilty of a sanctions offence in the UK criminal courts are liable to imprisonment for up to seven years or to an unlimited fine, or both.

## Looking Ahead – A Multinational Approach to Sanctions Compliance

OFSI has already issued guidance on how UK sanctions will operate after Brexit, and it has begun to impose regimes, for example in respect of Korea and Russia, in the event the UK leaves the EU without a deal.

With the UK’s exit from the European Union seemingly in a perpetual state of delay, however, it remains to be seen how new domestic sanctions legislation, namely the Sanctions and Anti-Money Laundering Act 2018, will be fully utilised in the UK. Deal or no deal, UK sanctions are likely to incorporate many of the

existing EU regulations, but could also incorporate some aspects of the U.S.-imposed regimes, particularly as trade negotiations develop.

Nevertheless, both OFAC and OFSI have demonstrated, through recent enforcement and policy, that they will penalise seemingly extraterritorial conduct if there is a nexus between such conduct and the U.S. or UK, respectively. With such complex issues in an increasingly dynamic field, and severe potential consequences flowing from economic sanctions violations, companies operating globally can make progress to address these issues by conducting periodic sanctions risk assessments and by implementing appropriately tailored risk-based compliance programs.

Companies that have uncovered a potential sanctions violation within the business which may require the submission of a report to OFAC or OFSI should seek legal advice immediately.

## Authors

This GT Alert was prepared by **Kara Bombach, Anne-Marie Ottaway, Barry Vitou, and Gareth Hall**. Questions about this information can be directed to:

- **Kara M. Bombach** | +1 202.533.2334 | [bombachk@gtlaw.com](mailto:bombachk@gtlaw.com)
- **Anne-Marie Ottaway** | +44 (0) 203.349.8700 | [ottawayam@gtlaw.com](mailto:ottawayam@gtlaw.com)
- **Barry Vitou** | +44 (0) 203.349.8700 | [vitoub@gtlaw.com](mailto:vitoub@gtlaw.com)
- **Gareth Hall** | +44 (0) 203.349.8700 | [hallg@gtlaw.com](mailto:hallg@gtlaw.com)
- Or your **Greenberg Traurig** attorney

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.<sup>-</sup> Houston. Las Vegas. London.<sup>\*</sup> Los Angeles. Mexico City.<sup>+</sup> Miami. Milan.<sup>\*</sup> Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.<sup>∞</sup> Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.<sup>^</sup> Tokyo.<sup>\*</sup> Warsaw.<sup>-</sup> Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>-</sup>Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>\*</sup>Operates as a separate UK registered legal entity. <sup>+</sup>Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>»</sup>Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>∞</sup>Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. <sup>^</sup>Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. <sup>‡</sup>Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>-</sup>Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2019 Greenberg Traurig, LLP. All rights reserved.*