

Alert | Export Controls & Economic Sanctions



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Wined and Fined: OFSI Imposes Financial Penalty on UK Company for Publicising Sanctioned Crimean Winery

The UK Office of Financial Sanctions Implementation (OFSI) announced on 27 September that it imposed a £30,000 penalty on UK company Hong Kong International Wine and Spirits Competition Ltd (HK Wine & Spirits) for breaching UK financial sanctions regulations.¹ This is the second monetary penalty OFSI imposed this year, following a **£15,000 fine against Tracerco Limited** in June.

HK Wine & Spirits received three payments and 78 wine bottles from Massandra, a Crimean winery, for entry into its 2017, 2018, 2019 and 2020 competitions.

Massandra is a designated entity subject to EU Regulation 269/2014 (the “Regulation”), which was introduced in 2014 following Russia’s annexation of Crimea.² The Regulation has been implemented by the UK³ and prohibits UK persons, entities and other “persons” within the UK from dealing with, and making funds and economic resources available to, a designated entity.

¹ OFSI, ‘Report of Penalty for Breach of Financial Sanctions Regulations (section 149(2) PACA 2017 report), Imposition of Monetary Penalty – Hong Kong International Wine and Spirits Competition Ltd’ (26 September 2022).

² Council Regulation (EU) No 269/2014 (Ukraine Misappropriation and Human Rights).

³ Ukraine (European Union Financial Sanctions) (No.2) Regulations 2014.

OFSI identified five breaches by HK Wine & Spirits. Receipt of the funds and wine, categorised as tangible economic resources, for each of the four competition entries amounted to four separate breaches. The fifth breach related to the publicity that HK Wine & Spirits made available to Massandra by entering it into its competitions. OFSI determined that this publicity was an intangible economic resource on the basis that it would be used by Massandra for the exchange of funds – the publicity was considered to have a positive influence on the sale of its wine, albeit the extent of such publicity and its effect has not been identified and no value has been attributed to it.

The £30,000 penalty imposed on HK Wine & Spirits is over seven times OFSI’s estimated total value of the funds and wine received by it – just £3,919.62. The Policing and Crime Act 2017 (PACA), from which OFSI draws its powers to impose monetary penalties, permits fines to be imposed even where it is not possible to estimate the value of the economic resources in question.

Significance

The case illustrates a need for UK incorporated companies to consider their risk exposure to sanctions regulations broadly. OFSI warns that companies can fall foul of sanctions regulations not only in respect of obvious economic resources, such as funds and physical assets, but also through the potential provision of intangible economic resources, offering intellectual property as one such example. This is not the first time that OFSI has emphasised this point. In 2019, OFSI fined Telia Carrier UK Limited for indirectly facilitating international telephone calls to a sanctioned entity, noting that “*economic resources’ can cover a wide variety of tangible and intangible resources and can be provided directly and/or indirectly*”.⁴ It is therefore important that companies in all sectors exercise careful due diligence in all areas of their business.

The sizeable financial penalty, in comparison to the low-value economic resources to which it relates, is also worth noting. The maximum level of monetary penalty OFSI can impose is the greater of £1m or 50% of the estimated value of the funds or resources. Within the permitted maximum, OFSI will decide what amount is ‘reasonable’ and ‘proportionate’⁵ based on its view of the seriousness of the case. OFSI may reduce a potential penalty amount by up to 50% where the wrongdoer voluntarily discloses a breach of financial sanctions. HK Wine & Spirits did not voluntarily disclose its breaches, so no such reduction was applied. In fact, an unnamed third party reported HK Wine & Spirits to OFSI, leading OFSI to uncover the breaches by exercising its information-gathering powers during its investigation into the company. OFSI states that HK Wine & Spirits fully cooperated with its investigation and made materially complete disclosures, but such cooperation does not in itself appear to have reduced the level of fine imposed, although OFSI guidance suggests that cooperation could be a mitigating factor.⁶

HK Wine & Spirits had exercised both its right under PACA to make representations against the penalty as well as its right to a ministerial review of the decision, but on both accounts the level of penalty was upheld. Prevention is therefore key – the prudent way to mitigate the level of a monetary penalty is to have sufficient measures (policies, procedures, training, controls) in place to prevent, identify (and potentially disclose) breaches at the outset.

Companies should not dismiss historical due diligence either. The breaches by HK Wine & Spirits occurred between 2017 and 2020. The UK has established its sanctions regime following Brexit, and OFSI

⁴ OFSI, ‘Report of Penalty for Breach of Financial Sanctions Regulations (section 149(2) PACA 2017 report), Imposition of Monetary Penalty – Telia Carrier UK Limited’ (9 September 2019).

⁵ OFSI defines these terms in its guidance: OFSI, ‘Monetary Penalties for Breaches of Financial Sanctions’ (May 2018), s.4.8.

⁶ OFSI, ‘Monetary Penalties for Breaches of Financial Sanctions’ (May 2018), s.3.31.

can investigate and impose monetary penalties for breaches under the Regulation which occurred before 31 December 2020. In any event, historical breaches may be caught under the current UK sanctions regime. There is nothing to suggest that any statute of limitations argument could apply in the violation of sanctions regulations; however, where criminal penalties are pursued, the proceedings would have to be brought within a specific timeframe for certain offences.

Conclusion

This is only the second financial penalty OFSI has imposed this year, and the eighth since OFSI first received powers to impose financial penalties under PACA; OFSI is yet to bring a criminal enforcement action for a breach of UK sanctions. It is apparent, however, that the investigation and imposition of penalties by OFSI take time – between 18 months and two years to conclude and announce the outcome of an investigation. While OFSI appears to have an appetite to impose monetary penalties for breaches, we may not see fines imposed in relation to recent Russian-related sanctions for at least a couple of years.

Notably, this enforcement action relates to seemingly nominal value transactions with little national security impact nor financial benefit to sanctioned persons. It raises the question: why would OFSI choose to create an enforcement case out of this? It is difficult to know whether this reflects OFSI ramping up internal resources and enforcement division expertise, whether it felt compelled to take action because it became aware of the violations through an unnamed third-party report to OFSI (as opposed to a voluntary disclosure by HK Wine & Spirits itself), or simply to make an example that even seemingly innocuous transactions can trigger enforcement actions. Only time will tell whether OFSI enforcement gains momentum and brings more significant and notable enforcement actions.

In the current geopolitical landscape, the UK sanctions regime is more expansive than ever: with resources in OFSI personnel expected to double by the end of the year; calls by UK Members of Parliament during a recent debate in the House of Commons for further legislation and penalties to be introduced prohibiting the provision of legal services in specific circumstances; intensified multilateral cooperation and assistance on sanctions enforcement with U.S. and EU authorities (among others); and recent developments, including an expectation that crypto exchanges self-report suspected violations to OFSI, the necessity for businesses to have in place procedures to ensure compliance with sanctions and sanctions-adjacent regulations is vital.

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