

KIRKLAND ALERT

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UK Establishes a Dedicated Unit To Increase Financial Sanctions Compliance and Proposes Increased Penalties for Non-compliance

On 31 March 2016, Her Majesty's Treasury announced the establishment of the Office of Financial Sanctions Implementation (OFSI), as first announced in the Summer Budget of 2015.¹ OFSI has been established to ensure that financial sanctions are properly understood, implemented and enforced in the UK. The office will serve as the UK government's rough equivalent to the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), and is expected to further enhance policy and enforcement coordination with sister economic sanctions agencies in allied and partner countries.

Financial sanctions are imposed by the UN and/or the EU, and become part of domestic UK law through the passing of statutory instruments. The government's aim is to use financial sanctions to make the fullest contribution possible to the UK's foreign policy and national security goals, and to help maintain the integrity of and confidence in the UK financial services sector.

The stated aims of OFSI are:

- To be a centre of excellence for financial sanctions by providing a high quality service to the private sector to raise awareness of and promote compliance with financial sanctions; and
- To work closely with other parts of government and law enforcement to ensure that sanctions breaches are rapidly detected and effectively addressed.

In addition, the UK government has also put forward draft legislation (in the form of the Policing and Crime Bill 2015-2016) which provides HM Treasury with new powers to impose civil fines for financial sanctions breaches, and which proposes increased maximum prison sentences for financial sanctions breaches.² There have historically been few prosecutions for breaching financial sanctions, and this proposed new legislation suggests the government considers civil penalties may be a more effective deterrent.

The Policing and Crime Bill proposes a number of changes to the penalty regimes for breaches of financial sanctions to ensure that they are consistent, have a sufficient deterrent effect, and provide the enforcement community with a broader and more flexible array of powers. These changes include the following:

- Increasing the maximum custodial penalty for breaches of financial sanctions from

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two years imprisonment to seven years imprisonment on conviction on indictment (or from six to twelve months on summary conviction).

- A new monetary penalty regime to be administered by OFSI (on which the government will be consulting later in 2016). Financial penalties will be imposed where OFSI is satisfied, on the balance of probabilities, that a breach of financial sanctions has been committed and the person responsible knew or had reasonable cause to suspect that their actions were in breach of sanctions. The Policing and Crime Bill sets the maximum penalty at the greater of £1 million or 50% of the total value of the breach. The organisation suspected of breaching sanctions will have the opportunity to make representations before the fine is imposed, and the opportunity to seek a review by a government minister after the fine is imposed.
- Amending the list of offences for which a Deferred Prosecution Agreement may be entered into to include financial sanctions breaches. Organisations charged with a criminal breach of financial sanctions may be able to have proceedings suspended subject to their compliance with certain court-approved conditions (such as a financial penalty, a disgorgement of profits, cooperation with investigators and implementing compliance steps).
- Amending the list of offences for which a Serious Crime Prevention Order may be imposed to include financial sanctions breaches. Such orders are civil orders imposed by a court which are designed to prevent further engagement in serious crime and, whilst they do not levy financial penalties, they can contain targeted prohibitions, restrictions or requirements that the court considers appropriate for the purpose of restricting or disrupting further involvement in serious crime.

The Policing and Crime Bill also proposes legislation requiring that UN sanctions are implemented in the UK much more quickly (currently they are given effect by way of an EU Regulation which can take around four weeks, and which increases scope for asset flight). The new legislation proposes that HM Treasury give effect to new UN regimes immediately on a temporary basis pending the adoption of necessary legislation by the EU.

The Policing and Crime Bill is currently at the “committee stage” in the House of Commons and remains subject to change as it goes through Parliament. It is not clear at this stage when it will actually enter into law.

The establishment of OFSI, and the proposed increased penalties for non-compliance, demonstrates that the UK government has deemed there to be an issue with financial sanctions compliance and is therefore taking a greater interest in enforcement. In light of this increased focus, companies should continue to ensure that, where they fall within the jurisdiction of EU financial sanctions, they take all necessary steps to ensure their business remains compliant.

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The United States, the EU and other countries scrutinize or regulate international business activities to advance priority national security, foreign policy and other ob-

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jectives. If not addressed effectively, such governmental scrutiny or regulation can adversely impact business strategy and investment decisions, lead to significant individual and corporate civil and criminal penalties, and may even result in imprisonment for responsible persons.

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- 1 The HM Treasury announcement is available here: <https://www.gov.uk/government/news/new-body-to-support-financial-sanctions-implementation-launched>
 - 2 The text of the Policing and Crime Bill is available here: <http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0134/16134.pdf>

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