



The process for imposing
monetary penalties for breaches
of financial sanctions:

Consultation response form

Name: [REDACTED]
Organisation: [REDACTED]
<input checked="" type="checkbox"/> Please tick if you are responding on behalf an organisation
Name of organisation (if applicable) - [REDACTED]
Address: [REDACTED] Email: [REDACTED]
<p>1. Do these introductory sections give you enough information to understand the scope of the law on monetary penalties? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>What else would be useful?</p> <p>Whilst, the introductory sections are helpful to understand the scope of the law on monetary penalties, it would be useful to understand if the definition of 'Officer' (Para 2.4 DG) is in line with the definition of 'Officer' in the Companies Act 2006?</p>
<p>2. What are your views on OFSI's compliance and enforcement approach?</p> <p>No comments.</p>
<p>3. Is there anything else you would expect a compliance model to tackle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(if yes please explain what below)</p> <p>In light of OFSI's expressed intention to be open, transparent and communicative with the industry, does OFSI intend to consult the industry in promoting better compliance standards? In addition, does OFSI envisage publishing examples of good practice to assist practitioners?</p>
<p>4. Do you understand our proposed case assessment approach?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

(if no please explain why below)

Click here to enter text.

5. 5. What are your views on our proposed case assessment approach?

The Case Assessment Approach is very helpful and detailed. It would be also beneficial to have more clarity around the following:

- a. Para 2.6.1 DG – please provide more clarity on when and under what circumstances OFSI will be 'issuing enforcement correspondence requiring better compliance practices' and 'referring regulated professionals or bodies to the relevant professional body or regulator'
- b. Para 2.6.1 DG – will all criminal cases be referred to the NCA?
- c. Para 2.7.2 DG – para 2.7.2 describes a 'higher standard' and that more than merely the theoretical possibility of a breach or violation is required to satisfy this clause. More clarity on what constitutes this higher standard will be useful for the industry to set standards of oversight responsibility among senior managers.
- d. Para 2.7.4 DG – the concept of UK Nexus needs elaboration and clarification on whether this means OFSI's jurisdiction over non-UK companies based outside EU who are clearing international transactions through UK. Additionally, under the concept of UK nexus does dealing in GBP give the UK jurisdiction in the same way it does for USD in the US? What about dealing in Euro, given the Euro clearing dominance of London, would that fall within UK Nexus too?
- e. Para 2.7.6 DG – it is stated that in the absence of being able to impose a monetary penalty, OFSI 'may be able to take other action short of a penalty that would respond effectively to the matter'. It would be helpful to elaborate what these 'actions short of a penalty' are and set out if the authority to impose this is derived from the Bill.
- f. Para 2.8 OG – the concept of Voluntary Disclosure (VD) requires more clarification. Currently the OFSI Financial Sanctions: Guidance¹ to comply with economic sanctions regulations does not contain any provision on VDs. By contrast the requirement to submit VDs to OFAC is well documented². It would be beneficial for OFSI to clarify or publish additional guidance on when it requires VDs, to whom, and what information is required in these VDs. Some additional questions that will require answers in practice are as follows -
- g. Will a VD credit be lost or affected, as is the case with OFAC, where a VD is disclosed to another regulatory body or agency before disclosure to OFSI?
- h. Are concerned persons allowed to make 'initial or notification' VDs where their internal investigation is not fully complete? If such 'initial or notification' VDs are allowed, what credit can be received from these? The higher the credit offered, more the incentive to disclose early and keep OFSI informed of all investigative steps.

6. Does this guidance give you enough information to help you understand how a penalty is calculated?

Yes No

¹See Financial Sanctions: Guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576291/OFSI_Financial_Sanctions_-_Guidance_-_December_2016.pdf.

² See Code of Federal Regulations, 31 CFR Part 501, Appendix A to Part 501 - Economic Sanctions Enforcement Guidelines

http://www.ecfr.gov/cgi-bin/text-idx?SID=dd2dd5dce7bbd6396db8dda4349cbd4&mc=true&node=pt31.3.501&rgn=div5#ap31.3.501_1901.a

(if no please explain why below)

More clarity and consistency would be appreciated in relation to the following:

- Para 2.11.9 DG – please provide more clarity on the difference between 'serious' and 'most serious'?
- Para 2.11.10 DG – please see above comment on VSDs in response to Question no 5. More clarification is required on what a 'materially complete' VSD is and when such affirmation is required in order to successfully claim discount.

7. OFSI will reduce the level of penalty if there is voluntary disclosure. What are your views on OFSI's approach to this?

See comments to question no 6 above.

8. Is the process for imposing a penalty and making representations clear from this guidance?

Yes No

(if no please explain why below)

[Click here to enter text.](#)

9. Do you understand the guidance on seeking a Ministerial review?

Yes No

10. What are your views on the process for seeking a Ministerial review?

No comments.

11. Does this guidance clearly explain why and how OFSI will publish information on penalties imposed for breaches of financial sanctions regulations?

Yes No

What are your views on the level of information OFSI will publish?

[Click here to enter text.](#)

12. Considering the document as a whole, does this guidance help you clearly understand OFSI's approach to imposing monetary penalties?

Yes, see comments above.

Please e-mail this form to: OFSIConsultation@hmtreasury.gsi.gov.uk

Or post to OFSI Consultation, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ