



Imposition of Monetary Penalty – STANDARD CHARTERED BANK

SUMMARY

1. Following a review pursuant to s147 of the Policing and Crime Act 2017 (PACA 2017), on Tuesday 18 February 2020, the Economic Secretary to the Treasury upheld the decision to impose two monetary penalties issued by the Office of Financial Sanctions Implementation (OFSI), part of HM Treasury, against Standard Chartered Bank 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. The first penalty amount is £7,693,233.50 (£7.6 million GBP); the second penalty amount is £12,778,576.33 (£12.7 million GBP), for a total penalty value of **£20,471,809.83 (£20.47 million GBP)**.
2. In upholding the decision to impose the penalties, the Minister substituted different amounts in each penalty. These amounts replace earlier penalty amounts imposed by OFSI of £11,900,000 (£11.9 million GBP), on 5 August 2019 and £19,600,000 (£19.6 million GBP) on 6 December 2019.
3. OFSI imposed monetary penalties because it was satisfied, on the balance of probabilities, that Standard Chartered Bank breached a prohibition imposed by financial sanctions legislation and had reasonable cause to suspect that it was in breach of that prohibition.
4. Standard Chartered Bank made a voluntary disclosure in this case. The penalties include a 30% reduction in line with the process set out in OFSI's published guidance on case assessment.

DETAIL

5. In July 2014, the European Union (including the UK) imposed restrictive measures against those responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. The restrictive measures set out in the EU Regulation are intended to prevent certain Russian banks, companies, and their subsidiaries

from accessing EU primary and secondary capital markets (including access to loans). Specifically, Article 5(3) of the EU Regulation, which came into force in September 2014, prohibits any EU person from making loans or credit or being part of an arrangement to make loans or credit, available to sanctioned entities, where those loans or credit have a maturity of over 30 days.

6. Standard Chartered Bank made a series of 102 loans to Denizbank A.Ş. between 8 April 2015 and 26 January 2018. At the time the loans were made, Denizbank A.Ş. was almost wholly owned by Sberbank of Russia. Sberbank was at the relevant time subject to restrictive measures under the EU Ukraine (Sovereignty and Territorial Integrity) regime. As Sberbank's majority-held subsidiary, the restrictions also applied to Denizbank A.Ş.
7. Article 5(3)(a) of the EU Regulation creates an exemption from the Article 5(3) prohibition which permits loans or credit which have the specific and documented objective of financing the import or export of non-prohibited goods between the European Union and any third country, to ensure that legitimate EU trade is not harmed. Accordingly, the exemption requires that the financed trades concern goods coming in or out of the EU (the EU nexus).
8. OFSI assessed that while some of the 102 loans were permitted under the EU Regulation exemption, 70 loans, with an estimated transaction value of over £266 million GBP, did not have an EU nexus and thus did not qualify for the Article 5(3)(a) exemption. They were therefore in breach of the EU Regulation. 21 of these loans with an estimated transaction value of £97,484,808.71 (£97.4 million GBP) were issued between 7 April 2017 and 26 January 2018. Breaches occurring after 1 April 2017 may be penalised under powers given to HM Treasury under section 146 of PACA 2017. It is these 21 loans for which OFSI has issued these penalties. OFSI determined that this case should be considered 'most serious'.
9. OFSI assessed that Standard Chartered Bank was aware of the sanctions regime and the need to take compliance steps and had initially ceased all trade finance business with Denizbank A.Ş. when Denizbank A.Ş. became a sanctioned entity. However, Standard Chartered Bank had then sought to introduce dispensations enabling such loans to be made where they considered an exemption was applicable. OFSI assessed that these dispensations were not appropriately put in place, and the subsequent operation of the dispensations enabled loans to be made which were not within any exemption and therefore were in breach of the EU Regulation. The failings persisted over an extended period of time, leading to Standard Chartered Bank repeatedly making new loans to Denizbank A.Ş.

10. Standard Chartered Bank disclosed the suspected breaches of financial sanctions to OFSI, carried out an internal investigation of the breaches, provided a detailed report of the investigation to OFSI as well as interim updates, and cooperated with OFSI's investigation. As a result of this, OFSI reduced each penalty by 30% following the process set out in OFSI's published guidance on case assessment.
11. Any person who has a penalty imposed on them by OFSI has the right to a Ministerial review under section 147 of PACA 2017. Under these provisions, the Minister may:
 - a. uphold the decision to impose the penalty and its amount,
 - b. uphold the decision to impose the penalty but substitute a different amount, or
 - c. cancel the decision to impose the penalty.
12. When assessing the case, OFSI grouped 14 of the 21 loans as one investigation and dealt with the other 7 loans as a separate case, based on our assessment of the facts at that time. At Standard Chartered Bank's request OFSI agreed to pause the time allowed for Standard Chartered to decide whether to seek a Ministerial review for the first (5 August) penalty until they were notified of OFSI's decision in the second (6 December) penalty case.
13. On 7 January 2020 Standard Chartered Bank exercised its right under PACA 2017, to a review by a Minister of the Crown of both penalties. The review was carried out by the Minister personally.
14. The Minister upheld OFSI's decision to impose the penalty. The Minister agreed that Standard Chartered Bank had made the 21 loans, with a combined estimated transaction value of £97,484,808.71 (£97.4 million GBP), directly available to a person subject to the prohibitions contained in Article 5(3) of the EU Regulation. He agreed that this was a 'most serious' breach of financial sanctions. However, he gave further consideration to Standard Chartered Bank's investigative report and found that they did not wilfully breach the sanctions regime, had acted in good faith, had intended to comply with the relevant restrictions, had fully co-operated with OFSI and had taken remedial steps following the breach. The Minister took the view that while these factors had been considered in OFSI's assessment, they should have been given more weight in the penalty recommendation.
15. The Minister in each case therefore upheld the decision to impose the penalty but substituted a different amount, reducing both penalty amounts. The first penalty amount was reduced to £7,693,233.50 (£7.6 million GBP); the second penalty amount was reduced

to £12,778,576.33 (£12.7 million GBP), for a total penalty value of **£20,471,809.83 (£20.47 million GBP)**.

16. Standard Chartered Bank did not exercise their right of appeal to the Upper Tribunal within the time limit in which to do so and have paid the penalty. The case is now concluded.

Note on Compliance

17. Restrictions set out in financial sanctions regimes vary between regimes, which means different jurisdictions pose different sanctions compliance risks. Some restrictions, for example an asset freeze, are broad. The EU Regulation 833/2014 imposes a specific set of sectoral-based restrictive measures in view of Russia's actions to destabilise the situation in Ukraine, including prohibitions on the purchase or provision of investment services or debt to a number of sanctioned entities. Firms and individuals must ensure that they fully understand both the prohibitions and exemptions contained within financial sanctions legislation, and that they put in place appropriate policies and processes to manage sanctions risk and ensure compliance with the relevant prohibitions and requirements. Firms should put in place risk-based compliance, including policies which recognise the different risks across different jurisdictions and mitigate them appropriately.

18. OFSI does not mandate a particular standard of financial sanctions compliance. It is good practice for firms to continuously review their own due diligence and compliance processes, as appropriate to the risks that they manage, to ensure that breaches of financial sanctions are either prevented or recognised early and appropriate action is taken.

19. OFSI values voluntary disclosure. Co-operation is a sign of good faith and makes enforcing the law simpler, easier, quicker and more effective. OFSI will make up to a 50% reduction in the final penalty amount for a prompt and complete voluntary disclosure of a breach of financial sanctions in 'serious' cases. If we assess a case as 'most serious' (as we did in this case) we may make reductions of up to 30% for voluntary disclosure. In this case that reduction amounted to £11,028,190.17 (£11.0 million GBP) in total.

20. Information on which persons are designated under each financial sanctions regime is published by OFSI and is available as a consolidated list on our website. You can also sign up for our e-mail alerts so you are notified each time the consolidated list is updated.

21. Firms should take care to make sure they carry out appropriate financial sanctions screening or checks, and act on the results in the correct way.

22. The financial sanctions broken in this case did not involve an asset freeze. Where the financial sanction is an asset freeze, it is generally prohibited to:

- deal with the frozen funds or economic resources, belonging to or owned, held or controlled by a designated person
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person
- engage in actions that, directly or indirectly, circumvent the financial sanctions prohibitions

The funds and economic resources are to be frozen immediately by the person in possession or control of them.

23. If you know or have reasonable cause to suspect that you are in possession of, or control of, or are otherwise dealing with, the funds or economic resources of a designated person you must:

- freeze them
- not deal with them or make them available to, or for the benefit of, the designated person, unless:
 - there is an exemption in the legislation that you can rely on
 - you have a licence from OFSI
- inform OFSI