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Age Like Fined Wine: OFSI Imposes Monetary Penalty on UK Wine Company for Dealing with Tangible and Intangible Economic Resources of Sanctioned Winery

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On 27 September 2022, following a ministerial review, the Office of Financial Sanctions Implementation (OFSI) imposed a monetary penalty of £30,000 in accordance with s. 146 of the Policing and Crime Act 2017 (PACA) against Hong Kong International Wine and Spirits Competition Limited (HKIWSC) for breaching UK[1] and EU[2] sanctions regulations. According to the relevant legislative provisions, it is prohibited to make funds or economic resources available, directly or indirectly, to a sanctioned party.

Between September 2017 and August 2020 HKIWSC received three payments and seventy-eight wine bottles from the sanctioned State Unitary Enterprise of the 'Republic of Crimea' Production-Agrarian Union (Massandra) for entry into HKIWSC's 2017, 2018, 2019 and 2020 competitions.

OFSI identified two types of breaches: four relating to the provision of funds and *tangible* economic resources (i.e. the wine bottles) and one relating to the provision of *intangible* economic resources in the form of the publicity that was made available to Massandra by entering its wine into competitions. OFSI imposed the monetary penalty because it was satisfied that, on the balance of probabilities, HKIWSC knew or had reasonable cause to suspect that it was in breach of the relevant prohibitions. No voluntary disclosures were made in this case, therefore a penalty discount was not applied.

Intangible Economic Resources: A Novel Interpretation

This decision represents a material development as OFSI's determination that publicity constitutes an intangible economic resource, i.e. an asset that may be exchanged for funds, is not intuitive, nor currently envisaged by the available guidance.

OFSI based its determination on the "reasonable inference" that publicity would increase Massandra's wine sales, and PACA expressly allows the imposition of monetary penalties when the exact financial value of the resources being made available cannot be determined[3]. However, publicity may more conventionally be construed as a service, and it does not squarely fit within the definition of 'economic resources', i.e. "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services"[4].

Publicity is not conventionally treated as an asset on a company's balance sheet and there is no way of directly exchanging 'publicity' for 'funds, goods or services'. Publicity *may* lead to increased sales which in turn may lead to increased profits, yet the

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path from publicity to funds is not linear. It would have been different – and perhaps more coherent – if OFSI were to have held that the publicity increased Massandra's goodwill in the form of brand recognition, and that such goodwill constituted an intangible economic resource. This construction would preserve the linearity of the exchange between 'economic resources' and 'funds' envisaged by the definition in the legislation, as goodwill is conventionally recognised as an asset which can directly be used to obtain funds.

Key Takeaways

This case serves as a useful reminder of the following:

- The breadth of the legislative provisions may not always be foreseeable based on a close textual reading. OFSI's creative construction of what constitutes intangible economic resources is an example. OFSI may favour generous, over-inclusive interpretations of key terms if it is motivated to enforce.
- Many categories of assets can fall under the umbrella of intangible economic resources. OFSI's report makes an explicit reference to intellectual property rights. This inclusion is to be expected given that intellectual property rights are conventionally treated as intangible assets and can be readily exchanged for money. Other inclusions may be less conventional, as this enforcement case shows.
- OFSI has the power to impose hefty penalties even in the face of relatively minor violations. The total cumulative value of tangible economic resources and funds received by HKIWSC was estimated at £3,919.62. Nevertheless, the penalty amounted to £30,000. In cases where the breach relates to funds or economic resources, OFSI is authorised to impose a monetary penalty the greater of £1 million and 50% of the estimated value of the funds or resources. In any other case, the maximum penalty is capped at £1 million[5]. Notably, penalties may be reduced if a voluntary disclosure is made. This highlights the value of proactive reporting supported by strong internal compliance systems which may detect breaches before the regulator does.
- OFSI continues to investigate and impose penalties for breaches of EU regulations and UK regulations that occurred prior to 31 December 2020. The breaches in this case occurred between 2017 and 2020 and were therefore breaches of the EU regulations and the now-repealed UK regulations implementing the EU regulations. If pre-2021 breaches are identified internally, it is worth considering a voluntary disclosure as the regulator can impose penalties if it becomes aware of historic noncompliance.

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[1] Regulations 3(1) and 6(1) of the Ukraine (European Union Financial Sanctions) (No. 2) Regulations 2014

[2] Articles 2(1) and 2(2) of Council Regulation (EU) No. 269/2014

[3] Policing and Crime Act 2017, s. 146(4)

[4] Sanctions and Anti-Money Laundering Act 2018, s. 60

[5] Policing and Crime Act 2017, s. 146

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have

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