



**DEPARTMENT OF THE TREASURY
OFFICE OF FOREIGN ASSETS CONTROL**



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**FTI Consulting, Inc., a Global Business Advisory Firm, Settles with OFAC for \$1,050,000
Related to Apparent Violations of Dealing in Prohibited Debt of Sanctioned Russian Bank**

FTI Consulting, Inc. (“FTI”), a Washington D.C.-based international consulting and advisory firm, has agreed to pay \$1,050,000 to settle its potential civil liability for apparent violations of OFAC sanctions targeting Russia’s financial sector. Between April 2019 and May 2021, FTI indirectly dealt in prohibited debt of VTB Bank OAO (“VTB”), a Russian state-owned bank, on six occasions. These prohibited dealings occurred when FTI extended debt of more than 14 days maturity to VTB by indirectly issuing invoices to VTB that went unpaid or were paid long past the expiration of the permissible 14-day tenor. All the while, even when invoices remained unpaid for long periods, FTI continued to perform valuable services for the benefit of VTB and continued to extend prohibited debt to VTB.

The settlement amount reflects OFAC’s determinations that FTI’s apparent violations were non-egregious and not voluntarily self-disclosed, as well as FTI’s cooperation with OFAC’s investigation. This action also emphasizes the foundational principle, adopted broadly throughout OFAC’s regulations and the relevant restrictions here, that it is prohibited to do indirectly what one cannot do directly. Firms should ensure that their analysis of sanctions risks is comprehensive and accounts for such prohibitions; they should also understand that OFAC will look closely at the underlying economic and practical realities governing formal arrangements in considering potential violations.

Description of the Apparent Violations

FTI is often engaged by law firms to provide consulting services in support of firms’ clients. In late 2018, a global law firm reached out to an FTI Senior Managing Director in the economic consulting unit about engaging FTI to provide expert economic consulting services on behalf of the law firm’s client, VTB, for a civil suit in Singapore. FTI, the law firm, and VTB soon thereafter agreed in principle to have FTI support VTB in the litigation, with the actual contract forthcoming. At that time, and at all relevant times thereafter, U.S. persons were prohibited from certain dealings with VTB because VTB had been added to OFAC’s Sectoral Sanctions Identification (SSI) list. Specifically, VTB was subject to Directive 1 under Executive Order (E.O.) 13662 (“Directive 1”), which prohibits U.S. persons from dealing in new debt of more than 14 days maturity of any person subject to it; the Directive also prohibits any transaction that evades or avoids any of the prohibitions set forth in Directive 1.¹ OFAC’s guidance on Directive 1 explains that the issuance of an invoice by a U.S. person is an example of new debt subject to the restrictions of Directive 1, that U.S. persons are prohibited from extending debt with an impermissible term to a non-sanctioned

¹ On June 29, 2014, Treasury added VTB to its SSI List and subjected it to the restrictions of Directive 1. See [“Announcement of Additional Treasury Sanctions on Russian Financial Institutions and on a Defense Technology Entity,”](#) July 29, 2014.

party if an SSI entity is an indirect borrower, and that such debt may not be issued “for the benefit of” an SSI entity by a U.S. person.²

In early 2019, FTI’s chief compliance officials, who recognized that dealing with VTB could expose FTI to sanctions risks, deliberated over different payment options for the provision of FTI’s economic consulting services for VTB. Pursuant to the compliance officials’ advice, and in collaboration with the law firm and VTB, FTI set up its engagement in support of VTB to be directly with the law firm. As agreed in the attendant letter of engagement between FTI and the law firm, FTI would issue invoices to the law firm; upon the law firm’s receipt of payment from VTB for FTI’s invoices, the law firm would pay FTI. FTI had no recourse to collect payment from the law firm unless and until the firm received payment from VTB for payment of FTI’s invoices. FTI also had no recourse against VTB if the invoices went unpaid.

In April 2019, FTI performed work on the litigation matter and sent the law firm two invoices. The law firm then sent the invoices, totaling approximately \$54,000, to VTB for payment. By indirectly issuing invoices that VTB was ultimately responsible for paying, FTI extended new debt to VTB.

In May 2019, FTI had yet to be paid for the two invoices it had already issued when it began discussions with the law firm about performing additional work for the same litigation matter in Singapore. The law firm relayed messages between FTI and VTB about the scope of the work and budget, which was subject to VTB’s approval. As with the prior engagement, an FTI Senior Managing Director based in New York consulted with FTI’s Legal and Compliance departments regarding the engagement’s terms and during the second engagement. FTI and the law firm agreed to use the same payment structure as the first engagement (which VTB had approved), where the law firm was engaged as FTI’s client in the letter of engagement, with payment of FTI’s fees subject to the law firm first receiving payment from VTB. FTI and the law firm agreed to use a retainer for the second engagement, which called for FTI drawing down funds against a retainer VTB would first pay to the law firm.

On June 7, 2019, FTI sent the law firm an invoice of approximately \$90,000 for the retainer payment, which the law firm told FTI it had sent to VTB, and assured FTI that the law firm would get payment from VTB for FTI. VTB, however, did not make the retainer payment. Despite the lack of funding for the retainer, FTI commenced work on the second engagement and sought payment that would have originated from VTB for the retainer. In late June 2019, FTI joined a call with the law firm and VTB to discuss the overdue payments.

Despite not receiving payment for the two April 2019 invoices for the first engagement, nor payment for its third invoice for the retainer for the second engagement, FTI continued to work on the VTB litigation matter by drafting expert economic analysis. On July 4, 2019, FTI inquired again about VTB’s lack of payment for the retainer amount and requested the law firm set up another call with VTB if it continued to fail to make the outstanding payment. FTI issued its fourth invoice on July 13, 2019; by that time the first three invoices were outstanding for 99, 92, and 35 days, respectively. FTI continued to work on the VTB matter without receiving payment and issued its fifth invoice on July 24, 2019. In September 2019, VTB made a partial payment of approximately \$57,000 to the law firm for the retainer invoice, 90 days after FTI had first issued the

² Frequently Asked Questions (FAQs) [370](#), [408](#), and [419](#), released on November 28, 2017.

invoice; the law firm in turn paid FTI. FTI issued its sixth and final invoice for the VTB matter on November 26, 2019.

As of March 2020, after having issued six invoices with a total value of approximately \$353,862, FTI had received only one partial payment for one of the six invoices. At that time, FTI's Senior Manager leading the consulting engagement sought assistance from FTI's compliance officer to resolve VTB's lack of payment. FTI subsequently told the law firm it expected the law firm to pay all outstanding invoices using its own funds. The law firm, however, reiterated the terms of the letter of engagement and told FTI that the law firm did not take on the credit risk of VTB not making payment. In June 2020, VTB made a second payment of approximately \$19,400 for one of FTI's invoices to the law firm, followed by the law firm paying FTI, 198 days after FTI had issued the invoice. FTI continued to seek answers and payments from the law firm until May 2021, when the law firm notified FTI that it was no longer representing VTB. FTI did not attempt to collect payment from the law firm after the law firm terminated its relationship with VTB. FTI subsequently submitted a notification of a potential violation to OFAC after investigating FTI's actions.

Under § 589.202(c) of the Ukraine-/Russia-Related Sanctions Regulations (URSR),³ 31 C.F.R. part 589, the following activities by a U.S. person or within the United States are prohibited: for new debt or new equity issued on or after November 28, 2017, all transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity of persons determined to be subject to Directive 1, their property, or their interests in property. Moreover, the prohibition in Directive 1 of E.O. 13662, as implemented in § 589.213 of the URSR, 31 C.F.R. part 589, prohibits any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in 31 C.F.R. part 589.

Between April 2019 and May 2021, FTI appears to have violated §§ 589.202 and 589.213 on six occasions when FTI dealt in new debt of longer than 14 days maturity to VTB, an entity that at the time of the transactions was subject to the prohibitions of § 589.202 of the URSR. FTI dealt in new debt of VTB through its indirect issuance of invoices, which represented new debt subject to the restrictions of Directive 1, to VTB, which VTB was responsible for paying and from which VTB benefited (the "Apparent Violations").

Penalty Calculations and General Factors Analysis

OFAC determined that FTI did not voluntarily self-disclose the Apparent Violations, notwithstanding its notification to OFAC, and that the Apparent Violations constitute a non-egregious case. Accordingly, under OFAC's Economic Sanctions Enforcement Guidelines ("Enforcement Guidelines"), 31 C.F.R. part 501, app. A., the base civil monetary penalty applicable in this matter equals the applicable schedule amount, which is \$525,000.

The settlement amount of \$1,050,000, aggravated above the base penalty, reflects OFAC's consideration of the General Factors under the Enforcement Guidelines, in particular the importance of anticipated impact of promoting future compliance by similarly situated persons.

³ Directive 1 of Executive Order 13662 was incorporated into the URSR which was published on May 2, 2022.

OFAC determined the following to be **aggravating factors**:

- (1) FTI, with the involvement of certain senior managers, recklessly missed multiple warning signs that it was dealing in prohibited debt of VTB. At the outset of the engagement, FTI was aware of and discussed the prohibitions applicable to VTB; the risks it identified informed the unique payment arrangement FTI entered into with the law firm. Thereafter, despite believing the arrangement lawfully shielded FTI from the risk of violation, FTI should have realized it was dealing in prohibited debt of VTB when it repeatedly issued invoices for ultimate payment by VTB, continued to work on and issue new invoices for the VTB matter despite not being paid by VTB, and joined a call with VTB to discuss late payments. Another warning sign arose when the law firm told FTI that the law firm did not take on the credit risk of VTB's non-payment of FTI's invoices.
- (2) FTI harmed the objectives of the sanctions program by extending an impermissibly long period of credit to VTB when the aim of U.S. sanctions policy was to prevent VTB from receiving such benefits. The indirect payment arrangement caused harm by obscuring transaction activity that, under a direct payment arrangement, could have successfully been screened against by intermediary parties.
- (3) FTI is a large and commercially sophisticated entity with an extensive global presence, providing consulting services to international business entities in various industries and jurisdictions. In light of OFAC's broad prohibitions on indirect dealings with sanctioned persons, this action seeks to promote greater awareness and scrutiny of such undertakings and deter future violations by the subject person and other similarly situated persons.

OFAC determined the following to be **mitigating factors**:

- (1) FTI agreed to toll the statute of limitations and cooperated with OFAC's investigation by providing comprehensive contemporaneous documentation about the underlying conduct, including by waiving privilege.
- (2) The volume and amount of the transactions at issue is very small compared to the total amount of payments that FTI makes and receives from clients and law firms.
- (3) FTI has made enhancements its sanctions compliance program, including by: (1) requiring training that addresses sectoral sanctions and raising awareness within its legal department with respect to law firm engagements in particular; (2) updating its sanctions compliance and restricted party screening policies and procedures; (3) supplementing its sanctions compliance resources; and (4) bolstering risk assessments and implementing additional controls in response to Russia's full-scale invasion of Ukraine.
- (4) FTI has not been the subject of a Finding of Violation or Penalty Notice by OFAC in the past five years.

Compliance Considerations

This case highlights how OFAC regulations apply to prohibited dealings conducted indirectly just as they do to those committed directly. Transacting indirectly through another party does not make permissible what is otherwise prohibited,⁴ regardless of whether the relevant OFAC program broadly proscribes dealing with a sanctioned person or restricts specified transactions. Indirect dealings risk engaging in evasion or avoidance rather than achieving compliance. U.S. persons cannot structure around sanctions prohibitions by having another party transact with a sanctioned entity on behalf of the U.S. person.

Additionally, this case underscores that U.S. persons must exercise caution when dealing with sanctioned persons who are subject to less-than-full-blocking measures. Such prohibitions can still be expansive in their application. While organizations may engage in certain transactions with less-than-fully blocked entities, it is imperative that they scrutinize each dealing to ensure that the underlying activity as well as any related transactions do not violate OFAC prohibitions.

Lastly, when assessing risks, firms should scrupulously account for the economic and practical realities of a proposed dealing or transaction and use appropriate controls to avoid arrangements that may merely create the appearance of compliance or unintentionally result in prohibited conduct. OFAC prohibitions extend to efforts to evade or avoid restrictions as well. In the case of debt restrictions, a sanctioned entity's failure to make contracted or expected payments may create significant sanctions risks.

OFAC Enforcement and Compliance Resources

On May 2, 2019, OFAC published [A Framework for OFAC Compliance Commitments](#) in order to provide organizations subject to U.S. jurisdiction, as well as foreign entities that conduct business in or with the United States or U.S. persons, or that use goods or services exported from the United States, with OFAC's perspective on the essential components of a sanctions compliance program. The *Framework* also outlines how OFAC may incorporate these components into its evaluation of apparent violations and resolution of investigations resulting in settlements. The *Framework* includes an appendix that offers a brief analysis of some of the root causes of apparent violations of U.S. economic and trade sanctions programs OFAC has identified during its investigative process. Information concerning the civil penalties process can be found in the OFAC regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. These references, as well as recent civil penalties and enforcement information, can be found on OFAC's website at <https://ofac.treasury.gov/civil-penalties-and-enforcement-information>.

Whistleblower Program

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) maintains a whistleblower incentive program for violations of OFAC-administered sanctions, in addition to other violations of the IEEPA and violations of the Bank Secrecy Act. Individuals located in the United States or abroad who provide information about sanctions violations to

⁴ See [FAQ 419](#); see also [FAQ 72](#) and [FAQ 400](#).

FinCEN's [whistleblower incentive program](#) may be eligible for awards, if the information they provide leads to a successful enforcement action that results in monetary penalties exceeding \$1,000,000 and the statutory requirements in 31 U.S.C. 5323 are otherwise met. The incentive program is available for whistleblowers providing information relating to potential violations at any type of enterprise in any commercial sector. FinCEN is currently accepting whistleblower tips.

For more information regarding OFAC regulations, please go to: <https://ofac.treasury.gov/>.