

Assisting the Libyan National Transitional Council

In summer 2011, a Hogan Lovells team, led by partner Jeremy Brittenden, advised representatives of the Libyan National Transitional Council (the "NTC") on its negotiations with the UK government and De La Rue (printers). The team successfully negotiated the release of 1.86bn Libya Dinar (approx £1 billion) in banknotes, which had been printed in the UK, and then frozen by the UK government as a result of United Nations imposed sanctions.

As an important issue in the Libyan revolution, the matter was covered extensively by the media. To give one example, following the release of the banknotes it was said that "The Royal Navy, the RAF and, probably, the SAS have all been working in recent weeks pro bono for the Libyan National Transitional Council, so it makes perfect sense for the resources of Hogan Lovells to be thrown into action as well." (The Times, 1 September 2011). In recognition of the project (alongside work for Farm Africa to create accessible livestock services in Kenya) Hogan Lovells has recently been named the 'Pro Bono Team of the Year' at the Lawyer Awards 2012.

DIPLOMATIC RECOGNITION OF THE NTC

The work undertaken by Hogan Lovells involved some challenging legal problems on the diplomatic recognition of Libya's new government, and played a role in supporting the country's economy at the height of its democratic revolution. As the revolution progressed, maintaining the supply of banknotes in the liberated areas of Libya was crucial to the ability of the NTC to inspire the confidence of the Libyan people, and to avoid a widespread humanitarian crisis.

By summer 2011, the number of banknotes in circulation in Libya was running dangerously low, and Libyan citizens could no longer withdraw money to pay for basic necessities such as food, water and medical services. Meanwhile in the UK, over a billion pounds worth of unissued Libyan Dinar banknotes were being withheld. This currency was capable of giving a much needed cash injection into the Libyan economy, but securing its release presented significant legal problems. As assets of the Central Bank of Libya (the "CBL") the banknotes had been seized and frozen by HM Treasury in March 2011. Alongside frantic diplomatic and legal efforts to have the sanctions lifted to allow the delivery of the banknotes, both the UK Government and De La Rue needed to be assured that people being put forward by the NTC as representatives of the CBL were indeed entitled to act on its behalf. At the heart of the issue was therefore the question: who is the lawful government of Libya?

The NTC was established on 5 March in Benghazi. It was set up not only to act as the political face of the revolution, but as the interim legislative and executive authority in Libya. With anti-Gaddafi forces in control of substantial parts of the country, it quickly became the de facto civil administration in those areas. On 19 March, the NTC changed the headquarters of the Central Bank of Libya and replaced the board by decree. However, its legal status and authority to do this, and the corresponding status of the Gaddafi regime, was unclear.

What constitutes, as a matter of English law, the government of a foreign state can be a complex question. The Foreign and Commonwealth Office (the "FCO") practice of routinely granting formal recognition of foreign governments ended in 1980, when the Foreign Secretary at the time confirmed in a parliamentary statement that "in future, cases where a new regime comes to power unconstitutionally, our attitude on the question of whether it qualifies to be treated as a government will be left to be inferred from the nature of the dealings, if any, which we may have with it".

While it is now a matter of fact and law for the courts, HM Government's attitude remains crucial. Where it is dealing with an entity on a normal basis as the government of another state, it is unlikely that the inference that the entity is the government of that state will be rebutted. However, as Mr Justice Hobhouse added in *Somalia v Woodhouse Drake & Carey Eg Ors* (1993): "Now that the question has ceased to be one of recognition, the theoretical possibility of rebuttal must exist."



Key Contacts



Andrew Gamble
Partner, London
Hogan Lovells International LLP
andrew.gamble@hoganlovells.com
T +44 20 7296 5205



Jeremy Brittenden
Partner, London
Hogan Lovells International LLP
jeremy.brittenden@hoganlovells.com
T +44 20 7296 5156



Tarek Eltumi
Senior Associate, Dubai
Hogan Lovells International LLP
tarek.eltumi@hoganlovells.com
T +971 4 377 9377

However, as the single voice of the popular uprising, and due to the support given to it by the liberated areas in Libya, the NTC provided a single focal point for the international community to direct its support which was so vital to gaining recognition.

France was the first to formally recognise the NTC as the sole legitimate representatives of the Libyan people on 10 March 2011. Since HM Government does not formally recognise foreign governments, and instead requires this to be inferred from its conduct, recognition by the UK was not quite so obvious. Clear signposts, however, began to appear. By the end of March 2011, the Foreign Secretary had publicly acknowledged "the utter absence of legitimacy for the Gaddafi regime". That was an important statement, because under English law there can be only one government. The FCO was, however, silent on who, if anybody, had acquired governmental legitimacy. So, in a move calculated to remove doubt and accelerate the release of assets, on 27 July 2011, William Hague made a statement in which he made plain for all the views of HM Government. He said: "The Prime Minister and I have decided that the United Kingdom recognises and will deal with the National Transitional Council as the sole governmental authority in Libya". This statement put the issue beyond question under English law. That the NTC was indeed the lawful Government of Libya as a matter of English law was then formally confirmed in *British Arab Commercial Bank plc v The National Transitional Council of the State of Libya* [2011].

HM Treasury and De La Rue were then persuaded that the NTC (as the new legislative and executive arms of government in Libya) was lawfully in control of the CBL, and capable of receiving the banknotes. All that remained was for the Sanctions Committee to lift the sanctions on the banknotes, and for De La Rue to be satisfied as to the identity of the persons into whose hands they would be delivered. After a considerable amount of ground work over a two month period, both issues were finally resolved on 30 August 2011. On 31 August 2011, the first consignment of the banknotes arrived in Benghazi on-board an RAF C-17 cargo plane.

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