Hogan Lovells

Global Policy Advocacy

Case Study: Unfreezing Libyan assets

BACKGROUND

Following the anti-Gadaffi revolution in early 2011, we were instructed by the rebel authorities, the National Transitional Council (NTC), to help them to secure the release of Libyan assets in the UK frozen under the UN sanctions introduced against Gadaffi.

THE ISSUE

Sanctions imposed in order to hamper Gadaffi's ongoing aggression against the Libyan people meant that many billions of pounds of assets owned by the Libyan state and held in the UK were frozen. Those assets included 1.86bn Libya Dinar (approx £950m) in banknotes that were printed in the UK by De La Rue under a contract with the Central Bank of Libya and then frozen by the UK government in March 2011.

Libya is a cash society, and following the revolution there was a run on the bank and the Central Bank of Libya's reserves of bank notes were exhausted, meaning that Libyan citizens could no longer withdraw money to pay for basic necessities, such as food, power, water, and medical services. These bank notes were urgently needed to replenish banks throughout Libya so that Libyans could withdraw money they need to survive, to pay for food, medicine, housing, and the like. There was also a pressing political imperative to secure the release of the banknotes, as this would reassure ordinary Libyans that our client was effectively governing the country and able to keep the economy going. That political pressure, and the growing humanitarian crisis, was exacerbated by the impending start of Eid, the festival marking the end of Ramadan.

In order to get the banknotes to Libya we needed to secure the lifting of the UN sanctions (through a license or resolution from the UN) and satisfy both the UK Government and De La Rue that the NTC was in lawful control of the Central Bank of Libya, previously controlled by Gadaffi's regime.

WHAT WE DID

We worked closely with the NTC's representatives, HM Treasury, the Foreign and Commonwealth Office, and De La Rue to obtain the necessary UN license under the Export Control Order 2008, the Libya (Asset-Freezing) Regulations 2011, and the Libya (Financial Sanctions) Order 2011, enabling the bank notes to be sent to Libya.

In very difficult circumstances on the ground in Libya, we helped the NTC to put forward the legal and factual evidence required to show that these banknotes were vitally needed and that they could be delivered and distributed without falling into Gadaffi's hands. We helped guide the process, including advising on numerous technical issues concerning the sanctions regime.

We represented the NTC in formal and informal engagement with HM Government, both in writing and in numerous meetings with officials across Whitehall. In addition to the sanctions issues, this matter involved complex questions of public and constitutional law concerning the status of sovereign governments and how they are recognized. Our public law experience meant that we were able credibly to put forward clear legal arguments as to why the NTC should be treated as the lawful government of Libya and thus as in control of the Central Bank.

THE RESULT

As Eid began, the UN approved the license to release the banknotes and the first tranche (worth some £180m) was flown into Libya by the Royal Air Force, with the remainder of the notes delivered over the following week.

If you have any queries about this case study or our Global Policy Advocacy practice more generally, please contact:

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