

EU Sanctions Against Egyptian Entities Post-Mubarak

Background

Following the political changes that occurred in Egypt in the early part of 2011, and the overthrow of the then President Mohamed Hosni Mubarak, the Council of the European Union has taken steps to bring to account those who are believed to have been engaged under the old regime in activities that have deprived the Egyptian people of the benefits of the sustainable development of their economy, and undermined the development of democracy in Egypt.

The Regulation

Council Regulation 270/2011 was published on 22 March 2011, and came into immediate effect in all Member States of the EU. In essence, the Regulation places restrictive measures on certain persons identified as being responsible for the misappropriation of Egyptian State funds, and persons, entities and bodies associated with them.

The Regulation applies,

- (a) within the territory of the Union;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 2 of the Regulation freezes the funds and economic resources of designated persons, entities and bodies, as listed in Annex 1 to the Regulation. 19 individuals are currently listed. The Regulation forbids the making available of funds and economic resources, directly or indirectly to, or for the benefit of those designated persons, entities and bodies.

Article 2 further forbids participation, knowingly or intentionally, in activities the object or effect of which is to circumvent the measures.



Article 4 sets out various derogations from the sanctions measures. These include the release or making available of funds or economic resources for the purposes of satisfying the basic needs of designated persons, and for payment of reasonable professional fees and expenses associated with legal services. Articles 5 and 6 also provide for a derogation in respect of release of funds to satisfy claims secured by a lien or judgment established prior to the date the designated person was listed in Annex 1, and for the addition to frozen accounts of payments due under contracts concluded prior to such listing. All such funds shall then become frozen.

In the case of Articles 4 and 5, permission must be sought from the relevant competent authority of the Member State for the release or use of frozen funds or economic resources, and that authority is obliged to notify the other Member States and the European Commission of any decision to grant an authorisation.

Article 8(2) provides for a defence where a party who has made funds available in breach of the asset freeze did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition.

Article 9 sets out an obligation upon all legal persons, entities and bodies that are subject to the Regulation to supply immediately any information in their possession, such as details

of accounts, assets and funds which would facilitate compliance with the Regulation, to the relevant competent authority in their State.

Article 13 provides that each Member State shall lay down rules on penalties applicable to infringements of the provisions of the Regulation.

Implications

In relation to trading with Egyptian State entities, it should be borne in mind that the asset freeze is not limited to assets held in the name of a designated person. For example, the prohibition in Article 2(2) on making funds and economic resources available, extends to circumstances where funds are made available directly or indirectly to or for the benefit of the listed persons. Hosni Mubarak and his family held considerable control over the Egyptian State and its enterprises. All those currently trading with Egyptian State entities, or who are contemplating entering into contracts with them, are strongly advised to conduct proper due diligence over any transactions involving Egyptian State assets and to obtain as much information as possible about the ownership and control of their counterparts in Egypt.

HM Treasury has published a Financial Sanctions Notice outlining its interpretation of Regulation 270/2011, a copy of which may be found on the SIMSL website. Further information may be obtained from the HM Treasury website.

For further information on this or other Loss Prevention topics please contact your usual Syndicate Contact or the Head of the Loss Prevention Department, Steamship Insurance Management Services Ltd.

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