



Iran Sanctions Bulletin 8

Bank Mellat v HM Treasury, Lloyd's Market and IRISL appeal to the EU General Court

4 February 2011

Welcome to our eighth bulletin in our regular series on sanctions against Iran. This bulletin looks at a recent decision from the Court of Appeal, details of the IRISL appeal to the EU General Court and the new Lloyd's market Bulletin.

Bank Mellat v HM Treasury [2011] EWCA Civ

The Court of Appeal handed down judgment in the case of Bank Mellat v HM Treasury on 13th January 2011 and ruled that restrictions imposed in 2009 which effectively excluded an Iranian bank from the UK financial market did not breach common law or ECHR principles of fairness.

Background

The Financial Restrictions (Iran) Order 2009, which came into force on 12 October 2009, was made by Her Majesty's Treasury. BM was affected by the Order and applied to the High Court seeking to have it set aside. Mitting J rejected this application in a judgment handed down on 11 June 2010.

The Court of Appeal dismissed BM's appeal,¹ Elias LJ dissenting in his view that the Treasury had failed to comply with common law procedural fairness as well as the procedural rights implied by Article 1 Protocol 1 and Article 6 ECHR. The majority ruled that BM's designation under the Counter-Terrorism Act was fair and proportionate when balanced against the legitimate aims of the UK government in trying to prevent access to the financial markets in the UK.

Read the full appeal [judgment](#).

IRISL appeal to the EU General Court

IRISL and affiliated companies lodged an appeal to the EU General Court challenging the Council's sanctions imposed on 26 July 2010, Case T-489/10 IRISL and others v Council. The application was lodged on 8 October 2010 and the summary report published in the EU Official Journal on 29 January 2010. The form of the appeal is an application for annulment of Council Regulation 668/2010 insofar as it designates IRISL as an entity subject to freezing orders and other sanctions.

IRISL challenges the Council Regulation on four grounds:

- a) violation of rights of the defence and rights to judicial protection since the Council's decision-making procedure did not provide IRISL the evidence on which its designation as an entity involved in Iran's nuclear programme was based. In addition, the reasons given by the Regulation are vague;
- b) insufficiency of reasoning;
- c) the total asset freeze imposed by the Council is unjustified and disproportionate in the restrictions it imposes on IRISL's rights to property and freedom to conduct its business; and
- d) errors of assessment of the evidence that IRISL's activities were involved in Iran's nuclear programme.

¹ Bank Mellat v Her Majesty's Treasury [2010] EWCA Civ 483

The European Court of Justice generally accords a low priority to maritime cases and is expected to take years to rule. Please [click here](#) for the Official Journal of the European Union Court proceedings.

Lloyd's Market Bulletin on complying with EU sanctions against Iran

Lloyd's have published a bulletin to provide the market with guidance on complying with sanctions against Iran following the implementation of EU Regulation No 961/2010. It is a consolidation of previous guidance issued by Lloyd's. It is comprehensive and some of the topics it covers include:

- Insurance restrictions
- Existing contracts prior to 27 October 2010
- Extensions
- Coverholders
- Sanction clauses
- Due Diligence
- Knowledge Defence
- Reporting to Her Majesty's Treasury
- Criminal Offences
- Transfer of funds

Read the full bulletin [here](#).

Sanctions news around the globe

Germany - Chancellor Angela Merkel has warned Iran that it faces further sanctions if it does not satisfy world powers' concerns about its nuclear programme. She said that she was disappointed that talks between Iran and the P5+1 (United States, France, Germany, China, Russia and Britain) ended without progress.

Switzerland - Switzerland is tightening sanctions against Iran to bring them in line with those of its own trading partners. The new measures, which came into force on 20th January, should prevent Switzerland from being used as a way for Iran to get goods that it would otherwise not be able to get from other countries, the government said in a statement.

Hong Kong – Hong Kong has said that it was determined to pass legislation to comply with UN sanctions against Iran. James To, head of Hong Kong's Legislative Council security panel, said the new laws would be passed in the "very near future".

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[Iran Sanctions Bulletin 4 – 12 October 2010](#)

[Iran Sanction Bulletin 3 - 15 September 2010](#)

[Iran Sanctions Bulletin 2 – 2 September 2010](#)

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