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Annulling the Iranian sanctions by courts, legal and economic impacts

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Introduction

On September 19, 2014, *Presstv.ir* reported the following:

"A top European court has struck down restrictions imposed by the European Union against the Central Bank of Iran (CBI) on an alleged charge of circumventing US-led sanctions against the Islamic Republic.

In a judgment on Thursday, the Luxembourg-based EU's Court of Justice said it "annuls…the EU March 23, 2012 [ruling] concerning restrictive measures against Iran in so far as it listed Central Bank of Iran."

"The reasons relied on are so vague and lacking in detail that the only possible response was in the form of a general denial," the court ruled on Thursday, adding that "those reasons therefore do not comply with the requirements of the case-law."

It said the charge leveled against the CBI is "insufficient in the sense that it does not enable either the applicant or the Court to understand the circumstances which led the [European] Council...to adopt the contested act."

According to an article in The Financial Times a day earlier:

"The EU's initial freeze on the assets of Iran's central bank has been struck out in court, calling into question the bloc's use of confidential sources to support its international sanctions.

The Court of Justice in Luxembourg ruled that the case against the Iranian central bank from January 2012 was based on confidential evidence from one unidentified member state, against which Tehran could not mount a defence."

Writing in the European Sanctions Blog, Maya Lester, who acts for the Central Bank of Iran, reported:

"The Bank was at that time listed on the grounds of "involvement in activities to circumvent sanctions". The General Court said that that reason simply copied out one of the criteria for listing, but was insufficient for the Bank to defend itself or for the Court to exercise judicial review, because it gave no indication of why that reason applied to the Bank, "no details of the names of persons, entities or bodies, listed on a list imposing restrictive measures, whom the applicant

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Editorial

Sehr geehrte Damen und Herren
liebe Germela-Mitglieder
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Wenn die internationalen Sanktionen gegen den Iran nach dem erwarteten Abschluss der Atomverhandlungen Ende Juni schrittweise aufgehoben werden, wird dies zu einem Neuanfang im deutsch-iranischen Verhältnis und zu einer Wiederbelebung der traditionell guten Wirtschaftsbeziehungen zwischen den beiden Ländern führen.

Der Iran ist eine der wichtigsten Wirtschaftsnationen im Mittleren Osten. Das Land basiert auf einer Jahrtausende alten Kultur, es hat eine hoch gebildete, motivierte Bevölkerung und verfügt über große Bodenschätze. Auch für die deutsche Exportwirtschaft ist der Iran traditionell einer der wichtigsten Märkte im Mittleren Osten. Seit vielen Monaten schon laufen, in Erwartung eines Abkommens, die Kontakte zwischen der iranischen und der deutschen Wirtschaft auf Hochtouren.

Durch die jahrzehntelange Abkopplung vom Welthandel hat der Iran einen enorm hohen Bedarf an Investitionen etwa in die Infrastruktur, in Industrieanlagen, in die Ölindustrie und in den Servicesektor. Deutsche Unternehmen haben dabei genau das, was im Iran gebraucht wird: Erfahrung und Technologie im Anlagenbau, in der Automobilwirtschaft, im Gesundheitswesen.

Aber auch für die Nachbarstaaten und den Binnenhandel mit den GCC Staaten bietet die Einigung mit dem Iran eine große Chance. Eine engere wirtschaftliche Kooperation wird auch die Annäherung und den Dialog der Kulturen vereinfachen und dabei helfen, die Region zu stabilisieren und gegen die Radikalisierung und den Terrorismus von Organisationen wie dem „Islamischen Staat“ zu schützen.

Diese Chancen sollten nicht an kulturellen oder juristischen Hindernissen scheitern wie sie so bezeichnend im Beitrag „Rechtsalltag in der EU: Die Umgehung der Rechtshilfe“ von Otmar Kury geschildert werden, aber erst recht nicht aufgrund fehlender Kenntnisse oder Kontakte ungenutzt bleiben. Und im besten Fall ist die wirtschaftliche Annäherung und Kooperation dann tatsächlich auch eine Basis für ein besseres Verstehen und eine schrittweise Annäherung, wo jetzt das Miteinander noch zu sehr von Konflikten dominiert wird.

Ich wünsche Ihnen eine interessante Lektüre.

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Kuwait company law

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As part of its 2035 plan, which entails leading Kuwait to regain its status as an international business hub, new legislation has been introduced with the aim of stimulating the local economy by encouraging the spur of Kuwaiti businesses, as well as attracting foreign investment. The introduction of Law no. 25 of 2012 (amended by Law no. 97 of 2013) (the "New Company Law") and its Executive Regulations has opened the doors to the application of international business standards with a view of preserving local heritage and practice.

Nadyn Saleh

Furthermore, the New Company Law is seen as a departure from the old company law (Law no. 15 of 1960) ("Old Company Law"), and has been drafted to take into account other recent legislation and practice such as the Capital Markets Authority Law (Law no. 7 of 2010) and Capital Markets Authority Corporate Governance Regulations (Law no. 25 of 2013), which reduces the number of contradictions faced by businesses who are subject to such laws. However, from the practical perspective, given the novelty of the law, the implementation of some of its featured aspects remain unclear.

Key aspects of innovation introduced by the New Company Law include the recognition of new types of companies that may be incorporated, such as sole proprietorships, special purpose vehicles, non-for-profit companies and Sharia-compliant companies, that has provided business owners with further options of forms their company may take, that better addresses their business model, corporate strategy and other interests.

In regards to the existing types of companies provided for under the Old Company Law, such as professional companies, limited liability companies and public and closed joint-stock companies, certain legal and regulatory requirements have been expanded upon or enhanced with the aim of protecting shareholders' and directors' rights and creating a more secure governance structure.

Among others, an example of this includes the obligation of joint-stock companies regulated by both the Ministry of Commerce and Industry and the Capital Markets Authority to have one or more independent directors to serve on the board of directors, who are required to have experience and expertise in this regard and cannot own any shares, as opposed to elected members of the board.

Additionally, another novelty introduced by the New Company Law was elaborating on the classes of shares to include preference shares in terms of voting rights, dividends or subordination, and shares issued below par value.

It is worth noting that creditors' rights have been greatly enhanced under the New Company Law, which addresses in greater detail the securitisation of shares, bonds and sukuk and their enforcement procedures that now supersedes the provisions of the Code of Civil and Commercial Procedure Law (Law no. 38 of 1980).

Furthermore, in a group company structure, a holding company would be jointly liable in the event that its subsidiary's assets are insufficient to address its obligations if either the subsidiary is acting as agent on behalf of the parent company, or the subsidiary is the forefront of the business, or both companies (the parent and the subsidiary) are acting as 'single economic unit'.

The significance of the New Company Law stems from the fact that it is one of the two ways in which foreign businesses may enter the Kuwaiti market, the other being through agencies. A key aspect still upheld in practice, although not expressed for in the New Company Law, is the Kuwaiti-to-foreign shareholding ratio requirement, which remains 51:49% respectively, with the exception of insurance companies whose Kuwaiti-to-foreign shareholding is 60:40% respectively, and 100% GCC-owned companies.

Challenging an arbitral award on jurisdiction under UAE law

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Introduction:

It is stated under the Model Law on International Commercial Arbitration[1], many national laws[2] and institutional rules[3] that the arbitral tribunal can rule on its own jurisdiction as a preliminary question, i.e. before ruling on the merits, or in an award on the merits[4]. The tribunal's right to rule on its jurisdiction is known as the principle of "kompetenz-kompetenz". Presumably, if the arbitral tribunal believes that it has no jurisdiction, it will issue an award on its jurisdiction or in other words will rule on its jurisdiction as a preliminary question, as in such a case there would be no point continuing the proceedings and dealing with the substantive issues in the dispute[5].

Such laws also deal with the issue of whether a tribunal's award on its jurisdiction can be challenged before the competent court. Whilst some of these laws permit such challenges[6], other laws do not[7], and whereas most of the laws which allow such challenges restrict their permission to the case in which the arbitral tribunal decides that it has jurisdiction[8], it is permissible under some laws to challenge a negative award on jurisdiction, i.e. an award that declines jurisdiction[9].

The 1992 UAE Civil Procedures Law[10], which deals with arbitration in articles 203-218, does not recognise the principle of "kompetenz-kompetenz". However, UAE courts and institutional rules in the UAE do recognise the principle. The question that had remained without definite answer was whether UAE courts would accept to look into a challenge to an arbitral award that deals only with the tribunal's jurisdiction. However, on January 19, January 2014, the Dubai Court of Cassation answered this question in case number 274/2013 Real Estate. A background on this case and comments on the court's judgment are stated below.

Background on the case:

The plaintiff had sold a plot in Dubai to the defendant, and a dispute arose between the two parties over the defendant's entitlement to some damages resulting from alleged breaches to the sale and purchase agreement. The defendant (claimant in the arbitration) referred this dispute to arbitration pursuant to clause number 13 of the agreement which states:

(13.2 In the event of any dispute between the parties arising out of or relating to this agreement, the parties shall, within 10 working days of a written notice from any party to the other party hold a meeting at the seller's head office in an effort to resolve the dispute.

13.3 Any dispute which is not resolved within 20 working days after the service of a notice in accordance with Clause 13.1, whether or not a meeting has been held, shall, at the request of either party made within 20 working days of the notice being given, be referred to arbitration under the rules of the Dubai Chamber of Commerce and Industry (the Rules) before a single arbitrator who shall be appointed by agreement

[1] Article 16.

[2] See, e.g., the Egyptian (Art.22), Jordanian (Art.21) and Omani (Art.22) laws.

[3] See, e.g., the LCIA Arbitration Rules (Art.23).

[4] However, some laws have deprived the tribunal of the right to rule on its jurisdiction on its own initiative such as the Jordanian Law which provides in article 21 that the tribunal can "rule on objections" that it does not have jurisdiction which means that it is only when a party objects on the tribunal's jurisdiction that the latter can decide.

[5] Under many laws and rules, it is the arbitral tribunal that decides whether to deal with its jurisdiction as a preliminary question or in an award on the merits. By way of comparison, section 31(4) of the English Act states that "[i]f the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly". It can be said that it is the tribunal which can more precisely assess which of these courses is more suitable to the circumstances of a particular case. Whilst this suggests that the parties should not have been given this right, it is expected that any unsuitable choice by the parties will be rejected since the parties' choice under the English Act must be consistent with what the Act states in section 33. This section provides, inter alia, that the tribunal shall "adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined".

[6] See, e.g., the Bahraini Law (Art.16).

[7] See, e.g., the Jordanian Law (Art.21).

[8] See, e.g., the Bahraini Law (Art.16).

[9] For example, section 67 of the English Act covers negative awards on jurisdiction.
The Model Law on International Commercial Arbitration does not enable the parties to challenge a negative decision by the tribunal on its jurisdiction, that is a decision declining jurisdiction. Whereas the drafters of the Model Law justified this on the basis that it would not be appropriate "to compel arbitrators…to continue the proceedings", this justification has been described as non-convincing by Sanders who rightly argues that "[i]n case of remission [under paragraph 4 of article 34] it is not felt inappropriate to remit a complete award to the arbitral tribunal in order to eliminate the grounds on which otherwise its award would be set aside". Therefore, a negative decision on the jurisdiction of the arbitral tribunal should be challengeable. This approach, as he adds, is more in line with the structure of the Model Law than to make the negative decision the final word on the jurisdiction issue. A/40/17, Commission Report, referred to by H.M. Holtzmann and J.E. Neuhaus, "A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary", (Netherlands: Kluwer Law and Taxation Publishers, 1989), p.528. P. Sanders, "UNCITRAL's Model Law on International and Commercial Arbitration: Present Situation and Future", 2005, 21, 4, Arbitration International, 452.

[10] Partly amended by Law No. 10 of 2014 which does not modify articles 203-218 of the 1992 Law with the exception of paragraph 3 of article 217. The old text of paragraph 3 prevented appeals from courts' judgments that certify arbitral awards when the amount in dispute did not exceed AED 10,000. The new text has raised the limit from AED 10,000 to AED 20,000.

between the parties or in the absence of agreement within 40 working days of the notice being given, by the President of the Dubai Chamber of Commerce and Industry….The arbitration award shall be final and binding on the parties and may be enforced in any court of competent jurisdiction. The parties waive any right of application or appeal to any court from the arbitral award).

The plaintiff (respondent in the arbitration) raised a jurisdictional objection on the grounds that the defendant (claimant in the arbitration) did not resort to arbitration within the agreed time-limit. On 30 August 2012, the Arbitral Tribunal issued "Award on Jurisdiction" confirming that it had jurisdiction to decide on the dispute.

Subsequently, the plaintiff challenged the Award before the Dubai Court of First Instance which did not accept the challenge on the basis that it was premature as the Award on Jurisdiction was not dispositive of all issues in the arbitration. Whilst this view was upheld by the Court of Appeal, the Court of Cassation thought that a party to arbitration can resort to the competent court to challenge an award on jurisdiction or to challenge a final arbitral award containing decisions on jurisdiction. Accordingly, the Court of Cassation decided to return

Dr Omar Hisham Al-Hyari

the case to the Court of First Instance to look into the issue of whether the Arbitral Tribunal really had jurisdiction to decide on the dispute.

Comments

The UAE legislator has, on the one hand, prevented any means of recourse against arbitral awards other than setting aside, and has, on the other hand, restricted the right to set aside with the requirement that setting aside must be based on one or more of the grounds that are stated in article 216 of the Civil Procedures Law. It is agreed that these grounds are mentioned exclusively and accordingly should not be interpreted widely[11].

This legislative policy of restricting the means of recourse and grounds for challenging arbitral awards is consistent with the requirements of speed on which the arbitration system is based.

It can be submitted that the Civil Procedures Law, specifically articles 203-218, does not contain any provision that can be considered as a basis for permitting a challenge to a tribunal's award on its jurisdiction.

In addition, the permission to challenge arbitral awards on jurisdiction before the Court of First Instance (And to challenge the judgment of the Court of First Instance before the Court of Appeal and the judgment of the Court of Appeal before the Court of Cassation) will be used in the UAE as a dilatory tactic by many weaker parties as it would seem that many arbitration proceedings will be stopped pending the final result of such a challenge.

In light of the above, it can be argued that the Dubai Court of Cassation's judgment that was issued on January 19, 2014 in case number 274/2013 Real Estate does not deserve support, and that any challenge to an award affirming jurisdiction must be allowed only when challenging the final award.

[11] *See,* e.g., the Dubai Court of Cassation judgment issued on 24/3/2009 in Case No. 270/2008 Commercial.

The Economic Development Conference and the Suez Canal Expansion Project

Maher Milad Iskander, geschäftsführender Partner der Kanzlei Maher Milad Iskander & CO.

When one thinks of Egypt, one is naturally inclined to delve into its rich history, picturing the illustrious pyramids and the Pharoanic royalty who occupied them. The country is constantly associated with the fertile Nile which pulsates through Africa, and remembered for its majestic Sphinx which has guarded the capital for centuries. Although an appreciation of a country's history is undoubtedly necessary for any future forecasts, the time has now come to form new associations for the country, ones which encompass the commercial potential that Egypt has to offer.

To sufficiently appreciate the new commercial environment in Egypt, it is important to have an understanding of the country as a whole, especially in relation to its international trade activity. Egypt is located at the heart of the world, connecting major trade routes and acting as a crossroads destination between Europe, the Middle East, Africa and west and south Asia. It occupies the north Eastern corner of Africa, bordered by Libya (1,115km) to the west, Sudan (1,273 km) to the south, Palestine (Gaza Strip, 11km), Israel (266 km) and Jordan to the northeast. Its north coast is on the Mediterranean Sea, while the eastern coast is bounded by the Red Sea. The Suez Canal links the Red Sea to the Mediterranean – a linkage vital to both Egypt and the world.

Egypt and the UK

As a result of the Egyptian market's strength, Egypt was added to the list of high priority markets in UKTI's new five year strategy in May 2011, which demonstrated the commitment of the UK to the promotion of trade links with Egypt. According to GAFI, the Egyptian General Authority for Investment, there are over 900 UK-invested companies operating in Egypt including British Gas, BP, Shell, Vodafone, Barclays, HSBC, GSK, AstraZeneca, IHG, G4S and Unilever. The UK's investment portfolio is therefore diverse, including major UK multinationals in the oil and gas, financial services, pharmaceutical and telecommunications sectors amongst others.

Egypt and the USA

Egypt remains the third largest export market for US products and services in the Middle East. The US is Egypt's second largest trading partner and the second largest foreign investor after the UK. Roughly two-thirds of total US investment is in the oil and gas sector, but investments are also made in areas such as consumer goods, pharmaceuticals, automobile production, franchises and financial services. Egypt is a significant importer of American agricultural commodities, machinery and equipment.

Moreover, Egypt is a major oil and gas producer, and investment needs in the power infrastructure remain substantial. Significant sectors of interest to US companies include: construction, architectural and engineering services, healthcare, telecommunications, water and waste water, chemicals, pharmaceuticals, renewable energy, education and training services, electric power generation, port and shipbuilding equipment, consumer goods and safety and security equipment. Consumer goods provide the highest profit margins for US companies at this time.

Egypt and Italy

On May 20, 2010, the first ferry set sail from the Italian port of Venice to the port of Alexandria of Egypt. The formation of a new shipping line will help reduce the transportation costs of exports, as well as cutting down transportation time. It also will link southern Europe with the Middle East via Egypt.

The volume of trade exchange between Egypt and Italy reached EUR 5.15bn. Italy ranks fifth for foreign investments in Egypt, as well as being one of the largest countries which participate in investment projects in Egypt. There are about 199 Egyptian-Italian joint projects with a total capital of about EGP 1.1 billion, according to the internal investment system.

Italian investments in Egypt have reached 636 projects broken up as follows; 237 industrial projects, 6 financial projects, 164 service projects, 146 tourist projects, 56 construction projects, 20 agricultural projects, 7 communications and IT projects located in the free zones or within the country.

Egypt and France

France is considered one of the most important European countries investing in Egypt, in terms of investment volume. The total value of French investments in Egypt is estimated to be L.E. 7.3bn coming from 458 projects in the finance sectors, agricultural industries, tourism, information technology, and construction and services sector.

Moreover, French companies are implementing the third phase of the underground metro. The latest two French companies that joined the French investors in Egypt are La Farge and Saint-Gobain; the value of La Farge investments in Egypt is estimated to be EUR 8.8bn while that of Saint-Gobain is EUR 170m.

French investments in Egypt primarily focus on the services sector; nevertheless, France has recently initiated projects in the industrial and productive sectors, such as; cement (LaFarge,Ciments Francais, Vicat), liquefied gas industries (Air Liquide), medicines (Sanofi-Aventis, Servier), chemicals (Rhodia, Arkema), electrical devices (Nexans, Groupe

Maher Milad Iskander

Atlantique), construction materials (Bonna-Sabla, Saint-Gobain, Soprema), and food commodities (Bel Bessnier, Bongrain, Lactalis, Danone).

Egypt and the Netherlands

In addition to the above, Egypt and the Netherlands have distinguished economic and trade relations, with both sides seeking to prolong their partnership within the upcoming years. The trade volume mounts annually to about EUR 1bn. The most prominent Egyptian exports to the Netherlands are vegetables, fruit, grains, petroleum and its products, yarn, carpets, ready-made clothes, iron and its products. On the other hand, the most important Dutch exports to Egypt are meat, fish and dairy, chemical and petrochemical products, oil, fertilisers, electrical and medical appliances. The Partnership Agreement between Egypt and the European Union concluded in 2004 contributed to promoting growth of bilateral trade relations.

The Netherlands considers Egypt a promising market characterised by the presence of an internal major market on the one hand, and a distinct role in the region on the other. The Netherlands is aware of the good investment opportunities in Egypt, particularly in the sectors of transportation, telecommunications, infrastructure, water and agriculture. The Netherlands ranks sixth on the world list of countries investing in Egypt, with Dutch investments in Egypt valued about EGP 6.5bn in 2008, directed to the sectors of industry, agriculture, finance, services, constructions, tourism, communications and information.

The Economic Development Conference (held in Sharm el Sheikh in March 2015) and the Suez Canal expansion project which was reignited by President Abdelfatah-El-Sisi on the August 5, 2014, are two upcoming milestones in the bid to encourage investment in the country which are important to take note of for a rounded appreciation of the upcoming Egyptian economic climate.

Economic Development Conference

The conference is a key landmark of the government's medium term economic development plan, which is designed to bring prosperity and improved social services to the people of Egypt. Attracting leading global figures from business and politics, the EEDC highlighted the extensive reforms the government has already implemented and showcased future reforms designed to restore fiscal stability, drive growth and attract investment, with the overarching aim of improving the welfare of the Egyptian people. The conference also presented investment opportunities to domestic and international investors across key sectors.

The EEDC's main goal was to reposition Egypt on the global investment map and affirm its potential as a source of political and economic stability in the region and a trusted partner on the international stage. In addition to the Suez Canal Expansion project, which has been given significant focus, the government has also screened 121 projects in eight key sectors, namely, transport and logistics, social solidarity, agriculture, energy and mining, housing and utilities, tourism, ICT and trade and industry. The Ministry of Investment has allocated over 30 projects to 15 investment banks in order to fast-track project execution by the conference.

The Suez Canal Project

History

Due to its ideal geographic location between the East and West, the Suez Canal provides the shortest link between the two regions. The canal also links the Mediterranean Sea and the Red Sea via its route from Port Said to Suez, making it an essential international navigation route. The idea of linking the Mediterranean Sea with the Red Sea by a canal dates back to ancient times, when the pharaohs noticed the trading benefits of connecting the two regions via the River Nile. The benefits of the canal continued to be enjoyed throughout the Islamic era, until it was dredged, creating its final form that we are most familiar with today.

The first efforts to build a modern canal came from the Egypt expedition of Napoleon Bonaparte, who hoped the project would create a devastating trade problem for the English. Though this project was initiated in 1799 by Charles Le Pere, a miscalculation estimated that the levels between the Mediterranean Sea and the Red Sea were too great (estimating that the Red Sea was some ten meters higher than that of the Mediterranean Sea) and work was quickly suspended.

After surviving ownership battles between the French, British and Egyptian government, a seven year agreement was signed in 1954 that provided for the gradual withdrawal of all British troops from the zone, who had been occupying the region since 1936, under a treaty which allowed Britain to maintain a defensive force along the Suez Canal Zone.

The canal remained under the control of the Egyptian and British powers until Nasser nationalised it in 1956, and has since been operated by the Suez Canal Authority. The canal was then closed to navigation twice in the contemporary period. The first closure was brief, coming after the tripartite British-French-Israeli invasion of Egypt in 1956, an invasion primarily motivated by the nationalisation of the waterway. The canal was then reopened in 1957. The second closure occurred after the June 1967 War with Israel and lasted until 1975, when Egypt and Israel signed the second disengagement accord. After the July 1952 Revolution, president Gamal Abd El Nasser nationalised the canal, making the management of the canal 100% Egyptian.

New Canal

Today, the canal provides the shortest shipping route between Europe and Asia. The new works also aim to increase trade alongside the canal. The enlarged canal will allow ships to sail in both directions at the same time over much of the canal's length. This is expected to decrease waiting hours from 11 to 3 hours for most ships and to double the capacity of the Suez Canal from 49 to 97 ships a day.

The plan is to build seven new tunnels under the canal (three in Port Said and four in Ismailia) and to transform a 76,000 sq km area on both banks of the canal into an international logistics, commercial and industrial hub. The estimated initial cost of the project is USD 4bn; however, economists expect revenues to hit USD 100bn annually when completed. The current Suez Canal brings in around USD 5bn of revenues per year, showing its important role as a source of hard currency for Egypt. Construction of the new passage is scheduled to take a year. This mega project will provide a million job opportunities once the first stages are completed, making a real qualitative leap in the national economy.

The construction of the new canal itself was initially scheduled to take five years. It was then first reduced to three years and finally ordered by President Abdel Fattah el-Sisi to be completed in one year only.

Advantages:

- It is the longest canal in the world without locks.
- Accidents across the canal are extremely rare, making it far safer than other major shipping routes.
- Navigation operates throughout the day and night.
- The Canal is capable of being widened and deepened when required, to cope with the development in ship sizes and tonnages. This in turn allows the canal to be used to its maximum capacity.

Overview of the Suez Canal expansion

- With the adoption of the Vessel Traffic Management System (VTMS – a system based on the most up-to-date radar network), vessels can be monitored and followed on every spot of the Canal and intervention in emergency cases can be taken.
- The Suez Canal accommodates partially loaded VLCCs and ULCCs (Ultra Large Crude Carriers).

Although maritime transport is the cheapest means of transport, more than 80% of the world trade volume is transported via waterways (seaborne trade). The Suez Canal accommodates approximately 8% of this trade, making it of great significance to a number of industries.

Suez Canal Corridor Development Projects

Aside from the development of the canal itself, the Egyptian president is pushing to further increase the role of the Suez Canal region in international trading and to develop the three canal cities: Suez, Ismailia and Port Said.

The area development projects involve building a new Ismailia city, an industrial zone, fish farms, completing the technology valley, building seven new tunnels between Sinai and Ismailia and Port Said, improving five existing ports and digging a new canal parallel to the Suez Canal. The project will transfer the canal cities into an important trading centre globally, as well as building new centres around the Suez Canal for logistic and ship services.

In total there will be 42 ventures, however, the following six are currently being given priority.

- Developing the roads of Cairo-Suez and Ismailia–Port Said into free roads for facilitating transportation and movement between the province's areas and to link it with the capital.
- Establishing Ismailia tunnel passing through the Suez corridor to link between the eastern and western banks of the Suez Canal.
- Establishing a tunnel at southern Port Said under the Suez Canal to facilitate linking the eastern and western banks of the Suez Canal to each other.
- Developing Nuweiba Port into a free zone.
- Developing Sharm el-Sheikh airport.
- Establishing a new water bypass on Ismailia canal up to the site of the water desalination station at the east of the Canal to support the new development areas.

Other initiated projects include:

New Tunnels

The chairman of the Suez Canal authority announced that seven new tunnels will be dug to connect the Sinai peninsula to the Egyptian homeland. Three tunnels will be dug in Port Said (two for cars and one for railways) and four will be dug in Ismaïlia (two for cars, one for railways and one for other special uses). This part of the mega project is under construction simultaneously with digging the new canal. The tunnels will cost USD 4.2bn (approximately EGP 30bn). The Egyptian Armed Forces will participate in the project by helping in the digging of the tunnels.

Technology Valley

The technology valley is an old project that was initially launched 17 years ago, and is now being revisited by the government. The project's location lies on the eastern part of Ismaïlia city and consists of four stages: the first stage covers 3,021 acres, the second stage 4,082 acres, the third stage 4,837 acres, and the fourth stage 4,160 acres. The technology valley will be the first step in starting Egypt's electronics industry for manufacturing technological devices.

Industrial Zone

This project will cover 910 acres of land north west of Gulf of Suez. The first stage of the project covers 132 acres and costs approximately of EGP 20m. The second stage will cover 132 acres once it is completed. Currently there are 23 factories operating and 56 still under construction. Upon completion the project will provide around 9,386 work opportunities.

The chairman of the Suez Canal authority announced that the government will build 18 new factories in the industrial zone, including: a glass factory, a car assembly factory, an electronics factory, a medicines factory, a textiles factory, a furniture factory, a paper factory, a sugar factory, a food factory, a petrochemicals factory, a petrol refining factory, a light metal manufacturing factory, and a minerals factory.

It was also stated that ship factories and services will be built among the Suez Canal corridor, which include: a catering and service centre for ships, a ship manufacturing and repair centre, a centre for manufacturing and repairing containers, and a logistic redistribution centres.

Airport City in Cairo

This is a huge project that is created in five phases within ten years. The project aims to turn the airport into a central travel hub by improving industrial services, tourist activities, business services, entertainment services, sports utilities and medical facilities. The first phase consists of 410,000 sq metres. out of the total 10 million sq metres. that has been set aside for the project. So far, USD 20m has been invested into the development of this new city, which aims to create 30,000 direct jobs and 70,000 indirect ones.

New Ismallia City

Covering 16,500 acres of land, this new city will accommodate approximately 500,000 Egyptians in order to relieve the pressure from the crowded towns of Cairo and the delta cities. The location of this city is also designed to house workers from the technology valley.

Fish Farming

New fish farms will be built in the eastern side of the Suez Canal with the main goal of producing high quality fish food. The project will utilise 23 tanks that will cover 120 km from Southern Tafrea to Gulf of Suez. The farm will make use of 400,000 acres of reformed land in Northern Sinai and will utilise solar panels that will produce up to 2,500MW of energy for the running of the farm.

Russian Industrial Zone

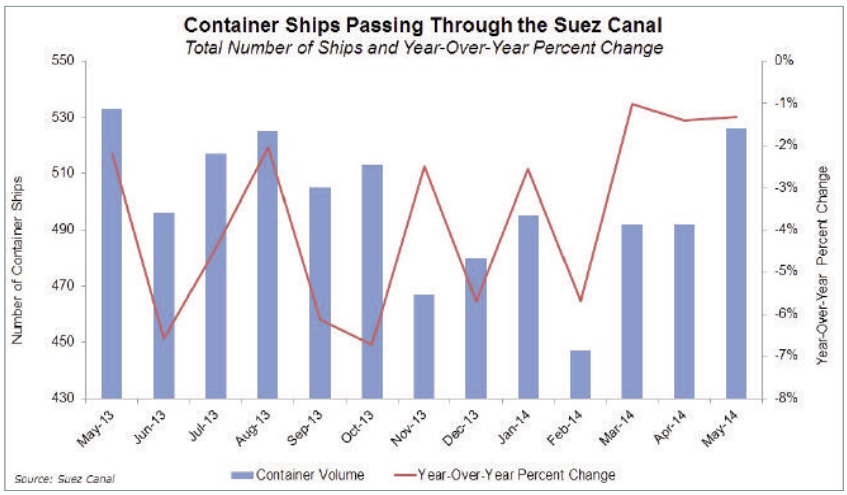
During a state visit to Russia, the Egyptian president and his Russian counterpart agreed to establish a Russian industrial zone in the new Suez development project. However, no more information was provided regarding the specifics of the project, and so it remains in its preliminary stages.

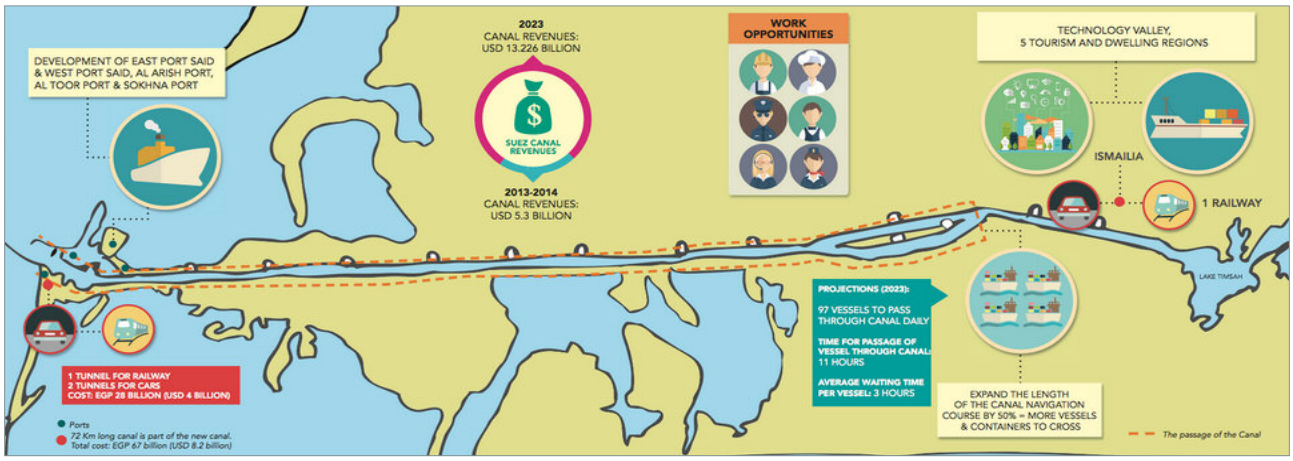
Companies Involved

In October 2014, Egypt signed contracts with six international dredging firms. The companies will work in five zones, while engineers from the Egyptian Army work in a sixth zone of the canal. In the same month, state-owned Arab contractors and the private Orascom Construction Industries (OCI) were selected to build four of the tunnels, two for cars and two for railways. In November 2014, the Armed Forces announced that alongside the above contracts, the German firm Herrenknecht had been selected to provide drilling equipment to build the tunnels.

The National Marine Dredging Company (NMDC)

NMDC is one of the leading companies providing dredging, reclamation and marine construction work in the Middle East. The company's fleet mainly operates within the Middle East; however, their technical capabilities can be extend-





ed to any part of the globe. The company also operates through multidiscipline workshops, slipways and fully supported administration and technical departments, from its head office in Mussafah in Abu Dhabi. NMDC employs 2,600 people, both national and expatriates.

Royal Boskalis Westminster

Royal Boskalis Westminster N.V. is a Netherlands-based company that provides services relating to the construction and maintenance of maritime infrastructure on an international basis. Today, the company operates one of the world's largest dredging fleets. Boskalis (Bos & Kalis) was created in 1910 by a group of families and in 1933, Boskalis partnered with the Westminster Dredging Company, which opened business opportunities with West Africa.

Van Oord

Van Oord is a Dutch contracting company that specialises in dredging and land reclamation. The company has successfully undertaken many projects throughout the world, including land reclamation, dredging and beach nourishment. As of 2013, the company's net worth was calculated to be EUR 130m.

Jan de Nul Group

Jan De Nul Group is a family-owned company headquartered in Luxembourg that provides services relating to the construction and maintenance of maritime infrastructure on an international basis. Its main focus is dredging (including other forms of marine engineering), which accounts for 85% of the turnover; however, it is also involved in other areas, such as civil engineering and environmental technology. The company has been responsible for some massive projects within the Middle East, such as the Manifa Field Causeway and Island Project in Saudi Arabia and the Palm Jebel Ali artificial island in Dubai

DEME Group

DEME was established as a holding company of two leading Belgian dredging contractors: Dredging International and Baggerwerken Decloedt. Both Dredging International and Baggerwerken Decloedt have been instrumental in the construction of the main Belgian ports and the deepening and maintenance of their navigation channels in the North Sea and the River Scheldt. DEME is thus firmly rooted in Flanders, the Dutch-speaking region of Belgium. The company's vast body of expertise and experience has been deployed for dyke construction, flood defence work, port construction and for improving maritime access worldwide, spanning three centuries. What was once a small dredging company that was active along the Belgian coast in 1875 now employs more than 4,300 people and has projects across the globe.

Great Lakes Dredge and Dock Company

This American company is currently the largest company providing construction services in dredging and land reclamation in the United States. GLD&D operates primarily in the United States but conducts one-quarter of its business overseas, particularly in the Middle East. GLD&D dredging operations consist of deepening and maintaining waterways, shipping channels, and ports; creating and maintaining (renourishing) beaches; excavating new harbours; reclaiming land in the water or improving low lying land areas; restoring aquatic and wetland habitats and excavating pipeline, cable and tunnel trenches.

In 1990, GLD&D renewed its overseas efforts and created a foreign division, and by 1993 the company was awarded significant projects in the Middle East. In 2003, GLD&D performed dredging of the Umm Qasr Port in Iraq, as well as constructing a port in Hidd, Bahrain around the same time

Herrenknecht

Herrenknecht AG is a German manufacturer of tunnel boring machines of all sizes. The company is the leading provider of holistic technical solutions in mechanised tunnelling, building on the experience of more than 2,600 railway, metro, road, utility, pipelines, hydropower and mining and exploration projects worldwide. The company employs 4,600 people, approximately two-thirds of which work at the company headquarters, with the remainder operating in various locations in China.

It is clear to see that a lot of time and effort is being invested into stabilising the Egyptian economic climate, and this effort is justified by the clear potential which the country has to be a commercial hub for the MENA region and a crossroads destination for traders from all corners of the world.

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assisted in circumventing sanctions or of when, where and how that assistance took place. The Council does not refer to any identifiable transaction or to any particular assistance"."

In this report, the following issues are analysed:

a. History of the sanctions imposed on the Central Bank of Iran;

b. Main aspects of the EU March 23, 2012 ruling concerning restrictive measures against Iran;

c. Arguments of the court to annul the EU March 23, 2012 ruling;

d. Legal consequences of the court decision;

e. Economic consequences of the court decision; and

f. Further steps to be taken in respect of the court decision.

History of the sanctions imposed on the Central Bank of Iran

The main text concerning the international sanctions imposed on the Central Bank of Iran is the UNSCR 1929 (2010) whose preamble includes the following paragraph:

Welcoming the guidance issued by the Financial Action Task Force (FATF) to assist States in implementing their financial obligations under resolutions 1737 (2006) and 1803 (2008), and recalling in particular the need to exercise vigilance over transactions involving Iranian banks, including the Central Bank of Iran, so as to prevent such transactions contributing to proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems …

Further, article 10(1)(a) of the Council Decision 2010/413/CFSP of 26 July 2010 imposed certain sanctions on the Central Bank of Iran:

1. In order to prevent the transfer to, through or from, the territories of Member States, or the transfer to or by nationals of Member States, entities organized under their laws (including branches abroad), or persons or financial institutions in the territories of Member States, of any financial or other assets or resources that could contribute to Iran's proliferation-sensitive nuclear activities, or the development of Iran's nuclear weapon delivery systems, financial institutions under the jurisdiction of Member States shall not enter into, or continue to participate in, any transactions with:

(a) banks domiciled in Iran, including the Central Bank of Iran…"

Article 20(1)(b) of the same Council Decision added that:

"1. All funds and economic resources which belong to, are owned, held or controlled, directly or indirectly by the following, shall be frozen:

(b) persons and entities not covered by Annex I that are engaged in, directly associated with, or providing support for, Iran's proliferation-sensitive nuclear activities or for the development of nuclear weapon delivery systems, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means, or persons and entities that have assisted designated persons or entities in evading or violating the provisions of UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010) or this Decision, as well as other members and entities of IRGC and IRISL and entities owned or controlled by them or acting on their behalf or providing insurance or other essential services to them, as listed in Annex II; …" (*emphasis added*).

The Council Decision 2012/35/CFSP of 23 January 2012 imposed the following sanctions on the Central Bank of Iran:

"7. Paragraphs 1 and 2 shall not apply to a transfer by or through the Central Bank of Iran of funds or economic resources received and frozen after the date of its designation or to a transfer of funds or economic resources to or through the Central Bank of Iran after the date of its designation where such transfer is related to a payment by a non-designated financial institution due in connection with a specific trade contract, provided that the relevant Member State has determined, on a case-by-case basis, that the payment is not directly or indirectly received by a person or entity referred to in paragraph 1" (Article 1(7)(c)) (*emphasis added*).

3. The Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 in its Annex included the name of the Central Bank of Iran on the list of the entities whose names had to be added to the list set out in Annex IX to Regulation (EU) No 267/2012. Article 23(2)(d) of the Regulation (EU) No 267/2012 made it clear that:

"2. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IX shall be frozen. Annex IX shall include the natural and legal persons, entities and bodies who, in accordance with Article 20(1)(b) and (c) of Council Decision 2010/413/CFSP, have been identified as…

(d) being other persons, entities or bodies that provide support, such as material, logistical or financial support, to the Government of Iran, and persons and entities associated with them."

Main aspects of the EU ruling concerning restrictive measures against Iran

Paragraph 11 of the Judgment of the General Court (First Branch) issued on September 18, 2014 in case T 262/12 states that:

"On the adoption of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1), the listing of the applicant in Annex VIII to Regulation No 961/2010, in the version amended by Implementing Regulation No 54/2012, was revoked in order to be replaced by the applicant's listing, for the same reasons as stated in paragraph 9 above, in Annex IX to Regulation No 267/2012 (the list in that annex, together with the list in Annex II to Decision 2010/413, as amended by Decision 2012/35; 'the contested lists'), with effect from 24 March 2012" (*Emphasis added*).

Paragraph 9 of the same Judgment reads as follows:

"The listing of the applicant in the abovementioned lists was based on the following ground: Involvement in activities to circumvent sanctions."

Paragraph 15 of the Judgment clarifies the matter more:

"By Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413 (OJ 2012 L 282, p. 58), the reasons for the applicant's listing in Annex II to Decision 2010/413, as amended by Decision 2012/35, were supplemented as follows: Involvement in activities to circumvent sanctions. Provides financial support to the Government of Iran."

Finally, paragraph 18 of the Judgment puts forward the final version of the reasons for the applicant's listing in Annex II to Decision 2010/413:

"By letter of 10 December 2012, the Council informed the applicant that its inclusion in the contested lists was based on a proposal for its listing submitted by a Member State, which could not be identified on grounds of confidentiality. The content of that proposal, as set out in the Council's cover note bearing reference 17576/12, enclosed with the letter of 10 December 2012, was worded as follows: 'The activities of [the applicant] help to circumvent the international sanctions against Iran. This measure [the restrictive measure imposed on the applicant] could substantially reinforce the diplomatic pressure currently being brought to bear on Iran'." (*Emphasis added*)

Arguments of the court to annul the EU March 23, 2012 ruling

The second and the third pleas of the Central Bank of Iran are of special importance in this case. As explained in paragraph 63 of the Judgment:

"The second plea claims a breach of the obligation to state reasons. The third plea claims a breach of the principle of respect for the rights of the defense and of the right to effective judicial protection."

The court agrees with these two pleas in paragraphs 76-81 of the decision by raising the following arguments:

1. According to settled case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act.

2. The statement of reasons must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review.

3. The statement of reasons must identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that that measure must be adopted in respect of the person concerned.

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4. Article 46(3) of Regulation No 267/2012 also requires the Council to give individual and specific reasons for fund freezing measures adopted under Article 23(2) and (3) of that regulation and to communicate them to the persons, entities and bodies concerned.

5. The Council must, as a general rule, fulfil its obligation to state reasons, by means of an individual communication, mere publication in the Official Journal of the European Union not being sufficient.

6. The statement of reasons required by Article 296 TFEU and by Article 46(3) of Regulation No 267/2012 must be adapted to the provisions under which the fund freezing measures were adopted.

7. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

8. In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand the scope of the measure concerning him.

Finally, clauses 89-92 of the Judgment argue in favour of the second plea of the Central Bank of Iran:

"89 The statement of reasons set out in paragraph 82 above does not expressly indicate to which of the listing criteria laid down in Article 23(2) of Regulation No 267/2012 it is related. Nonetheless, taking into account the reference to 'activities to circumvent sanctions', the statement of reasons in the contested act can readily be construed as referring to the second criterion, which rests precisely on the idea of providing 'assistance' to the circumvention of sanctions. On the other hand, in the absence of any reference to any provision by the applicant of 'support' to nuclear proliferation or to any 'involvement' on its part in the procurement of prohibited goods and technology, that statement of reasons cannot be related, as the Council contends, to the first criterion mentioned in paragraph 85 above. Further, where the Council observes, in paragraph 26 of the statement of defense, that the 'support' or 'involvement' of the applicant in nuclear proliferation or in the procurement of prohibited goods and technology is 'necessarily' a consequence of its 'position as "banker to the Iranian Government"', that is, in practice, a reference to factors which are not present in the statement of reasons in the contested act and which therefore cannot be taken into consideration as part of that statement of reasons, in accordance with settled case-law (see, to that effect, Case *T 390/08 Bank Melli Iran v Council*, paragraph 80 and the case-law cited)."

"90 In the light of the foregoing, it must be held that the statement of reasons in the contested act may only be taken into consideration as regards the second criterion, to which it implicitly but necessarily refers."

"91 To the extent that the statement of reasons in the contested act is based on the second criterion mentioned in paragraph 85 above, it is however insufficient, in the sense that it does not enable either the applicant or the Court to understand the circumstances which led the Council to consider that the second criterion was satisfied in the case of the applicant and, accordingly, to adopt the contested act. That statement of reasons appears to be no more than a reproduction of the second criterion itself. It contains nothing in the form of specific reasons why that criterion is applicable to the applicant. That statement of reasons gives no details of the names of persons, entities or bodies, listed on a list imposing restrictive measures, whom the applicant assisted in circumventing sanctions or of when, where and how that assistance took place. The Council does not refer to any identifiable transaction, or to any particular assistance. In the absence of any other details, that statement of reasons is clearly insufficient to enable the applicant to determine, having regard to the second criterion, whether the contested act is well founded and to state a defense before the Court, and to enable the Court to exercise its power of review."

"92 Consequently, the second plea in law, claiming a breach of the obligation to state reasons, must be upheld and, without there being any need to examine the other pleas or complaints raised by the applicant, the contested act must be annulled." (*Emphasis added*)

What are the legal consequences of the court decision?

On September 18, 2014, The Financial Times refers to three legal consequences of the court decision that need to be analysed in more detail:

1. In the Iran case, however, the EU said there would be "no practical consequences" because there were further later provisions against Iran that would remain in force, ensuring the embargo on the central bank remained.

The sanctions imposed on the Central Bank of Iran are composed of different layers of complicated measures that can be assimilated to a sticky cobweb to catch all of those who dare enter into the forbidden area. For example, the following legal texts impose specific sanctions concerning the activities that are or may become related to the functions of the Central Bank of Iran:

a. Council Decision 2012/635/CFSP (OJ L 282, 16.10.2012);

b. Council Decision 2012/35/CFSP (OJ L 19, 24.1.2012) – Corrigendum (OJ L 31, 3.2.2012);

c. Council Decision 2012/829/CFSP (OJ L 356, 22.12.2012) – Corrigendum (OJ L 268. 10.10.2013); and

d. Council Regulation (EU) No 1263/2012 (OJ L 356, 22.12.2012).

To make the issue even more complicated, sometimes judgments of the General Courts have annulled, or amended, some of the above Council Decisions or Regulations. For example, in the case of T-565/12, the National Iranian Tanker Company has lodged an application "for annulment of (i) Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58), in that the applicant was listed in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39) and (ii) Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 282, p. 16), in so far as that regulation concerns the applicant."

The noteworthy part of the application is the last qualification that specifies the scope of the application: "in so far as that regulation concerns the applicant". The General Court decides in paragraph 67 of its decision that:

"In the light of all the foregoing, without it being necessary to examine the third and fourth pleas in law, the contested

decision and regulation must be annulled, in so far as they concern the applicant." (*Emphasis added*).

This means that as long as the Central Bank of Iran has not brought a case against the Council of the European Union and a General Court has not issued a decision in favour of the CBI, the Council Decision 2012/635/CFSP shall remain in force "in so far as it concerns the CBI".

As a result, an appropriate analysis of the sanctions imposed on the CBI requires establishing corresponding links between the sanctions included in the above three Council Decisions and one Council Regulation on the one hand, and the functions of the CBI on the other. In the meantime, it can be confirmed in all certainty that a court decision may not remove all layers of the sanctions because the purpose of imposing them was to stop the CBI to pass through different layers of the sanctions easily and rapidly.

2. The basis for EU sanctions is coming under increasing pressure.

The entities and individuals whose names appear on the list of the sanctions have lodged cases against the Council of the European Union before European courts and in some cases, they have won their battles, although winning a few battles is far from winning the war. The main weaknesses of the Council Decisions as explained by Reuters (http://www.reuters.com/article/2013/07/15/iran-nuclear-courts-idUSL5N0F83S520130715) are:

1) At the heart of the issue is the refusal by EU governments to disclose evidence linking their targets to Iran's nuclear work. Doing so in court, they say, may expose confidential intelligence, undermining efforts to combat the programme.

2) Lawyers for the Iranians argue there simply is no evidence that proves any link to the nuclear programme – a view supported by British judges, who did review some secret material this year.

3) To safeguard its sanctions policy and its economic pressure on Iran, the EU may have to present evidence – including sensitive intelligence – in court. But because of rules governing pan-European courts, all evidence would then become public, which may damage clandestine operations and unravel the process of devising sanctions.

4) Lawyers for the Iranian plaintiffs paint the conflict as a human rights issue, praising the Luxembourg court for decisions they say amount to taking a stand against government abuse.

5) In a case brought by the Mellat Bank, Britain's Supreme Court judges "ruled that measures against the bank were 'arbitrary' and 'irrational' – exposing the possibility that even secret evidence governments may share with the courts might not be enough to justify sanctions".

By putting the above elements together, one can see that the legal basis of the sanctions imposed on Iranian entities and individuals may come under even more pressure, because the arguments that are used in a case and have resulted in success may be raised in similar cases, resulting in a trend of debasing the current or even future sanctions. The report cited from the reuters.com summarises the situation clearly:

"While the net of sanctions may have only been cut in a few places at this stage, dozens of other cases are in the pipeline. The concern among EU officials is that if a few more knots are untied, the entire sanctions netting could start to unravel."

3. The right to appeal, or to apply for any other reviewing measure

The right to appeal or to apply for reviewing measures may include any of the following steps:

FIRST STEP: Denial of legal grounds – The Statement of *Europäisch-Iranische Handelsbank AG* reads as follows:

In accordance with Council Implementing Regulation (EU) No. 503/2011 of 23 May 2011 *Europäisch-Iranische Handelsbank AG* (eihbank) has been listed in Annex VIII of Regulation (EU) No. 961/2010 of the Council of the European Union, despite the fact that regular audits by the German regulatory authorities and auditing companies of the transactions executed via this bank have given no grounds for objections…. Accordingly we see no legal grounds for our listing in Annex VIII of the above-mentioned regulation, and eihbank has taken legal steps against this measure.

SECOND STEP: Implementing of the Decisions – The Statement of the *Persia International Bank Plc* (PIB) reads as follows:

Due to re-listing of PIB, any depositor who wish to withdraw their deposit continue to be subject to a license issued by HM Treasury. A copy of the HM Treasury license application for withdrawal of deposit with PIB is available at: http://www.persiabank.co.uk/HM_Treasury_Supplement_No.2-09Sep10.pdf

THIRD STEP: Appeal based on procedural ground – In the case of *Bank Mellat against HM Treasury*, according to *duhaimelaw.com*:

With respect to the procedural grounds of appeal, the Court allowed the appeal because the Bank received no notice of the Order and had no opportunity to make submissions in respect of it. As noted by the Court, it is one of the "plainest principles of justice" that a person, including a legal person, be entitled to an opportunity of being heard before a tribunal when the tribunal is by law invested with the power to affect that person. Relying upon *R. v. Secretary of State for the Home Department Ex p Doody* [1994] 1 AC 531, the Court held that fairness required that the Bank be given an opportunity to make representations before the Order was issued and that applied even though the power to issue the Order arose from secondary legislation.

FOURTH STEP: Appeal based on substantive ground – It is reported on the same website that:

With respect to the substantive grounds, the Court held that the Order was unlawful, inter alia, because it had no rational

connection with the objective of frustrating Iran's weapons program – the nuclear proliferation problem, and the associated problem of using the banking system to facilitate prohibited transactions, was not limited to Bank Mellat but was an inherent risk of banking and the risk posed by the Bank was no different than that posed by other banks. The Court also held that the Order was disproportionate to any contribution it could have made to the stated objective.

What are the economic consequences of the court decision?

According to The Financial Times:

But even if Iran were to win a big case on central bank sanctions that would not guarantee that the rest of the blocked funds would immediately enter back into circulation.

Iran is cut out of the Swift international currency clearing system so transfers would remain difficult. Western banks such as BNP Paribas and HSBC have also faced heavy fines for dealing with Tehran, and some bankers say they would be reticent about returning to business with the Iran.

In other words, the sanctions imposed on the Central Bank of Iran have different layers. A court decision can remove one layer but the other layers will remain in force until one of the following two happens:

a) The CBI brings cases before the court to have all of the sanctions removed and succeeds in all of them; or

b) The negotiations between P5+1 and Iran results in a final agreement to remove all sanctions, either in several phases (most probably) or in one go.

Until then, the economic impact of winning a case against those entities that have imposed sanctions on the CBI will be minimal and mostly psychological.

Concluding remarks

The Central Bank of Iran, like many other Iranian persons and entities, has been subject to the sanctions imposed on it by the UN, the EU and the USA. These sanctions have created a network of barriers and limitations that stop the CBI from carrying out certain activities or at least have made them extremely difficult. To remove or to rescind these sanctions, the CBI has lodged cases against the EU authorities in order to prove that the imposed sanctions are devoid of legal basis. Despite its success in some of these cases, little or no change has taken place in overall positioning of the CBI in the international financial market. Sanctions are imposed as a sign of the intention of the international community to 'encourage' Iran to respect the rules set by the UN, the EU, and the USA. Therefore, the only way out of the current impasse is to succeed in the international talks with the P5+1.

The history of these talks with Iran shows that both sides and sometimes the third parties have tried to find a common ground to expedite the process of reaching a final agreement. The Tehran Declaration of May 17, the Russian Step-by-Step Proposal of July 12, 2011, and the 2012 Proposals are just three examples of these efforts.

Despite all of the initiatives taken by both sides and the third parties, it seems "very far and very close" to reach an agreement, as stated by the Minister of Foreign Affairs of Iran. The parties agreed on a "Joint Plan of Action" on January 20, 2014 and extended the period of talks to give each other more time to look into different ways of political rapprochement. The main question that remains is that whether the parties could benefit from the current round of negotiations to put aside their disagreements in order to build a solid basis for their future relationship or not.

2015: The year of the New Investment Law in Jordan

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Introduction

On October 2014, a new investment law came into force in Jordan to overcome the "lack of harmony between economic and investment policies, and the existence of several overlapping government agencies".[1]

The new investment law, the Law No. 30 for the year 2014 ("**New Investment Law**") repealed the main previous investment laws such as the Investment Promotion Law No. 16 for the year 1995, the Investment Promotion Law No. 67 for the year 2003, the Investment Law No. 68 for the year 2003, the Law for Investment Climate and Enterprise Development No. 71 for the year 2003, and the Development and Free Zones Law No. 8 for the year 2008.

The New Investment Law comprises of six chapters; the first chapter deals with the incentives and privileges outside the development and free zones, the second chapter deals with the incentives and privileges within the boundaries of the development and free zones, the third chapter deals with the investment window and licensing, the fourth chapter deals with the Investment Council and Investment Commission, the fifth chapter deals with the regulatory provisions for the development and free zones, and the sixth chapter deals with general provisions in respect of investments in Jordan.

Under the current investment structure, Jordan is divided into three main areas. The first two main categories of areas are the development and free zones, on one hand, and the non-development and non-free zones, on the other hand. All of the said areas are subject to the New Investment Law. The Aqaba Special Economic Zone is the third category of areas. This area was excluded from the application of the New Investment Law since it is subject to the Aqaba Special Economic Zone Law No. 32 for the year 2000.

The Investment Council and the Investment Commission

Stemming from the government's keenness to ensure the unification of authorities concerned with investment, the Investment Council was established under the New Investment Law. This Council is chaired by the Prime Minister and membership includes the Minister of Industry and Trade, the Minister of Finance, the Minister of Labor and the Minister of Planning, the Governor of the Central Bank of Jordan, and the heads of the chambers of industry and trade; in addition to the head of the Investment Commission.

The private sector also has four seats in the said Council and they are appointed by the Council of Ministers upon the recommendation of the Prime Minister for a period of two renewable years. The mandate of this Council is to recommend investment policies, strategies and laws to the Council of Ministers; and to study the impediments that are facing economic activities and try to find proper solutions.

In addition to the Investment Council, the Investment Commission was established with an aim to promote and attract domestic and foreign investments, to ensure continuity in investment, and to enhance economic growth. This commission is headed by a chief who is appointed by the Council of Ministers upon the recommendation of the prime minister for a period of four renewable years. The chief is entrusted with the powers to manage the affairs of the commission, to execute the decisions issued by the Investment Council, and to prepare the annual report and the annual financial statement of the commission.

Firas T. Malhas

Main incentives and privileges

For the purposes of exemption from income tax under the New Investment Law, Jordan is divided into territories other than the development and free zones, and each territory will enjoy preferential income tax treatment. The income generated by certain projects operating within the said territories will benefit from tax exemption with rates that will be not less than 30%.

[1] 'Debate continues on a new investment law,' The Economist, 2014
http://country.eiu.com/article.aspx?articleid=1091670093&Country=Jordan&topic=Economy&subtopic=Fo_8 accessed 7 March 2015

The foreseen division of territories by the Government includes category A and category B. Category A includes the southern parts of Jordan such as the governorates of Ma'an, Tafilah, Karak, as well as the northern and northern-south of Jordan such as Mafraq, Ajlon, and Jerash. The projects operating within this area will be granted 50% exemption from income tax for a period of ten years.

As for category B; this category includes the some of the northern-west of Jordan, such as the governorates of Balqah and Madaba. The projects operating in this area will be granted 30% exemption from income tax for a period of ten years. Yet, it should be noted that this classification of territories has not yet been approved by the government – at the time of writing it is still working on the classification.

As for the projects registered and operating in the development zones such as the King Hussein Bin Talal Development Area (KHBTDA) in Mafraq, the Ma'an Development Area, the Irbid Development Area (IDA), the Dead Sea Development Zone, the Jabal Ajloun Development Zone, and the King Hussein Business Park (KHBP) in Amman, the New Investment Law maintained the rate of income tax with 5%.

As for the free zones, profits earned by register enterprises from (i) exporting its products or services outside Jordan, (ii) transit trade, (iii) sale of products within the boundaries of the free zone, and (iv) providing services within the boundaries of the zone are exempted from income tax. Also, non-Jordanian staff working in the projects registered at the free zone can benefit from income tax exemption, and their salaries and wages are fully exempted from income tax.

In addition to the exemption of income tax, production input associated with certain economic and production activities will be either exempted from sales tax or it will be subject to zero rate sales tax. The law in this regard set the main principles regarding sales tax but left all the details to instructions to be issued by the government in this regard.

International Investment Standards

With more than 50 bilateral investment treaties and more than nine international investment treaties, Jordan realises the standards of international investment protection including expropriation, equitable treatment and access to justice. To that effect, the New Investment Law included a provision that prohibits the expropriation (or taking any measures equivalent to expropriation) of any economic activity unless such expropriation is made for public purpose and it is accompanied with a fair compensation, which must be paid to the investor (without any delay).

Moreover, the notion of equitable treatment was realised by the New Investment Law. The law included a clause stressing that foreign investors must be treated in the same manner as domestic investors. Yet, the investment of foreign investors will be subject to certain restrictions or limitations, where the ownership of the foreign investor will be regulated in accordance with a special regulation to be issued in this regard. The said regulation will include the sectors, in which the foreign investor may invest, the maximum percentage of foreign ownership, and the minimum foreign capital allowed therein.

The New Investment Law emphasises the investor's rights to freely transfer the principle amount of capital or any part thereof, to transfer any returns and profits accrued from his/her investment, to liquidate his/her investment, and to sell his/her economic activity or his/her share(s) therein. Under the New Investment Law, the investor is entitled to freely manage his/her economic activity in the manner he/she deems appropriate and through the person(s) of his/her choice.

Free access to justice was introduced in a different language in the New Investment Law. The language used in the previous investment law was made general and realised all investment treaties concluded by Jordan. The previous law provided that: "Arab and international agreements pertinent to investment, the protection thereof and dispute resolution related thereto to which the Kingdom is a party or has acceded, shall be taken into consideration when applying the provisions of [the Investment Law]."

The New Investment Law has introduced the following provision: The investment disputes arising between the governmental entities and the investor must be settled within a period of six months. Otherwise, the parties may refer to the Jordanian Courts or settle their dispute in accordance with the Jordanian Arbitration Law or any alternative dispute resolution agreed between the parties.

It should be noted that Jordan adopted a new income tax law, which came into force on January 1, 2015. This new income tax law restructured and increased the tax rate as follows:

Taxable income for a natural person: For the first JD 12,000: 7% (after considering exempted income); for the next JD 10,000: 14%, and for every subsequent JD: 20%.

Tax rates in respect of legal entities: industrial sector 14%; banks 35%; telecommunication companies, electricity generation and distribution companies, mining and basic materials companies, insurance, reinsurance and brokerage firms, financial companies and legal persons undertaking financial leasing activities 24%, and other sectors 20%.

Rechtsalltag in der EU: Die Umgehung der Rechtshilfe

Otmar Kury, Präsident der Hanseatischen Rechtsanwaltskammer Hamburg

Staats- und Gerichtsgewalt enden an der Landesgrenze. Kein Staat ist befugt, auf fremdem Hoheitsgebiet Ermittlungen zu führen.

Um in Zivil- und Strafsachen grenzüberschreitend operieren zu können, verständigen sich souveräne Länder auf Rechtshilfeabkommen. Die Europäische Union und deren Mitgliedsstaaten stellen ihren Bürgern die Übereinkommen über die Rechtshilfe in Strafsachen gerne als Fortschritt und Wohltat vor. Präsident Juncker hat in seinen neuen politischen Leitlinien erklärt, die Rechtsstaatlichkeit und die Grundrechte stärken zu wollen.

Hinter den Kulissen sieht es indessen anders aus:

Seit einiger Zeit führen amerikanische Ermittlungsbehörden eine Vielzahl von Verfahren wegen des Verdachts von Embargoverstößen - auch gegen große Konzerne und Banken, die in Deutschland wirtschaftlich aktiv sind und in den USA eine Niederlassung unterhalten.

Vorgeworfen wird die Verletzung von US-Sanktionen, die zumeist gegen sog. Schurkenstaaten implementiert wurden, die aber weder von den Vereinten Nationen noch von der EU mitgetragen werden. Das „Office of Foreign Assets Control“ (OFAC) des U.S. Department of the Treasury führt die Verfahren aus überwiegend fiskalischem Interesse. Bisher ließen sich viele Milliarden Dollar Strafzahlungen bei den betroffenen Unternehmen und Banken eintreiben. Zur „Aufklärung“ der US-Embargo-Verstöße werden reihenweise Zeugen aus Deutschland vernommen, die bei den Unternehmen oder Banken beschäftigt sind.

Wer im Vertrauen auf das deutschamerikanische Rechtshilfeabkommen annähme, die Zeugen würden auf US-Ersuchen durch deutsche Rechtspflegeorgane rechtstreu belehrt und durch eine

Otmar Kury

Vernehmung geführt werden, über die zur Sicherheit eine schriftliche Dokumentation erstellt würde, irrt.

Die amerikanischen Staatsanwälte verlangen mit der Suggestion, die Geldstrafen würden sich verringern, die Kooperation der Unternehmen und stellen es deren Mitarbeitern „frei“, in London in amerikanischen Großkanzleien zu erscheinen, die dort eine Dependance unterhalten.

Spurt der Zeuge nicht, hat das Unternehmen oder die Bank mit höheren Strafzahlungen zu rechnen und der Zeuge das Risiko, plötzlich als „beschuldigter“ Zeuge geführt zu werden, der auf amerikanischen Antrag durch Interpol zur Fahndung ausgeschrieben und nach einer Festnahme – zumeist auf irgendeiner Reise auf irgendeinem ausländischen Flughafen – später in Washington D.C. vernommen werden kann.

Bei den Verhören in London, an denen kein britisches Rechtspflegeorgan teilnimmt, weil die US-Staatsanwälte, FBI und der amerikanische Zoll dort mit britischer Billigung offensichtlich tun und lassen können, was die EU sich so nicht gedacht hat, muss der Zeuge wahrheitsgemäße Angaben machen. Auf eine Belehrung oder ein Protokoll seiner Angaben wartet er vergeblich. Seiner Rechte wird er beraubt. Für etwaige unrichtige Angaben würde er in den USA allerdings streng verfolgt werden.

Ob sich die Europäische Union den Beitrag des Vereinigten Königreichs zur Idee geordneter Rechtshilfeverfahren so vorgestellt hat?

Egypt

Tax bylaws passed in Egypt

Bylaws governing capital gains and dividends taxes have been passed by the Egypt government, meaning that in taxing capital gains the law will not differentiate between individuals and corporates, and will be applied once annually at the end of the year. Individuals and cooperates will not be taxed twice if capital gains taxes are applied, and the taxable amount will not be subjected to income tax. Additional, the law will not be applied to treasury bills. The rate of the tax is set at 10%, but the Tax Authority will collect a 6% tax down-payment per quarter to be deducted from the original 10%.

For dividends taxes, investors whose portfolios have an annual turnover of LE 5m with dividends less than LE 10,000 are exempted. If an investor receives dividends of more than LE 10,000 and has less than a 25% stake in a company he will pay 10% tax. This will decrease to 5% if he owns more than 25% of a company. Negative impacts of the new law are expected to be offset by the recent decision to slash income and corporate profit taxes, as this will compensate for investor losses due to increasing company valuations, net income and dividend payments.

Kuwait

Kuwait stock regulator plans changes to align market with global norms

The Capital Markets Authority of Kuwait will separate the settlement of trades from its central depository and make the time allowed for the transfer of securities the same for all investors, to bring its practices in line with international norms. Due to a sluggish economy and a stagnant regulatory environment, the stock market has struggled in recent years, resulting in a withdrawal of foreign investors to markets in the UAE, Qatar and Saudi Arabia.

Regulators now want to improve the investment environment in the country and raise its classification from a frontier market to an emerging market. Plans were also unveiled to set a single period for transferring ownership of a security at two or three days after the sale. Kuwaiti citizens now have their trades settled at the time of the transaction and foreign investors two days after the transaction.

UAE

UAE planning federal transport law

The UAE is planning to pass a new law that would pave the way for more than Dh 80bn of investment in railroads and metros, according to the Minister of Public Works, Abdullah Bel Haif Al Nuaimi. Already 70% of the federal transport rules covering safety and operational standards have been completed and the legislation is expected to be finalised this year. The law is also expected to make it easier for foreign companies to enter the market to boost the national economy, fight congestion and protect the environment.

Rules to protect minority shareholders issued in UAE

The UAE Securities and Commodities Authority has issued new rules to protect minority shareholders, including regulations covering halts to trading in companies shares. Therefore no company has the right to halt trading in its shares before or during an annual general meeting or during a transaction, though the regulator can call a halt for several reasons, including a threat to the proper functioning of the market.

Furthermore, restrictions have been tightened on initial public offers of shares, including banning any advertisement for an IPO before regulatory approval for the offer has been obtained. An investor will be required to make a general offer for a company if its ownership reaches 50% and it wishes to exceed that level. A subsidiary cannot be a shareholder in its parent company and any subsidiary which is put in that position by an acquisition must dispose of its shares in the parent within 12 months.

Regional

Gulf States agree to push VAT project

Work on introducing a value-added tax around the GCC region is set to continue, according to officials. At a meeting of the GCC's Financial and Economic Cooperation Committee in Doha a draft agreement on VAT was adopted which will be endorsed by member governments, according to Kuwait's Minister of Finance Anas Al Saleh. Although the idea of introducing VAT has been in discussion for about ten years, state officials might now focus more seriously on the idea, as cheap oil has opened up state budget deficits among most GCC governments in recent months.

Kuwait's Finance Minister said that each GCC country would issue its own VAT law based on common principles of the Doha agreement and that the GCC officials also agreed to ask the IMF to prepare studies of the effects of low oil prices on GCC member states, especially on their financial stability, domestic energy prices and tax policies. But until now, there is no time frame for introducing VAT or the tax rate yet.

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