

Opinion

Letting Iran off the hook

The UK has weakened its sanctions against Iran by falling into line with the amended EU regime



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In November 2011 the UK broke ranks with the EU and introduced its own Iranian sanctions regime. The Financial Restrictions (Iran) Order 2011 targeted the financial services sector by prohibiting financial institutions in the UK from doing business with Iranian banks at any of their branches worldwide.

The orders sought to prevent Iran-originated funds ending up in a bank with operations in the UK. It was irrelevant that the funds may have been routed through multiple intermediaries.

This was made clear by the HM Treasury notice that accompanied the order. This stated that when dealing with transfers from a bank operating in the UK to an Iranian bank, “such a payment will be prohibited even if it is made through one or more intermediaries”. With respect to transfers from an Iranian bank to a bank operating in the UK, “it is also prohibited to participate in transactions involving indirect payments from Iranian banks, such as those made through one or more intermediaries.”

Jersey and the Isle of Man (IoM) adopted identical orders. Guernsey did not. In November 2012 the UK added a further year to the regime. Jersey and the IoM followed.

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In December 2012 the EU amended its sanctions, bringing into force restrictions on transfers to and from Iranian financial institutions. Then on 31 January, HM Treasury revoked the 2012 order, putting an end to the UK’s short-lived Iran sanctions and drawing the UK back within the EU fold. At the time of publication Jersey retains its Iran sanctions regimes.

HM Treasury’s reason for revoking the 2012 order was that the “EU regulation 267/2012 contains effectively the same prohibition as was contained in the 2012 order.”

But while the EU regulations certainly brought EU sanctions close to the UK’s, it is wrong to claim they contained effectively the same prohibition. The EU regulation contains no prohibition against

transfers involving intermediaries.

The revocation of the 2012 order leaves an enforcement lacuna big enough, if not for a coach and horses, then at least a reasonably sized buggy to pass through.

If you are an EU resident or entity transferring money to or from an Iranian bank and the bank you are using for the transfer does not come within EU regulations, the obligation to seek authorisation for the transfer, normally done by your bank, transfers to you. This means a company with operations in the EU must still seek authorisation for transfers to or from Iranian banks, even if the bank it is using for the transfer does not operate in the EU.

However, the real vacuum relates to non-EU persons or businesses. The UK sanctions applied to them by placing the obligation and the enforcement risk on banks operating in the UK. Prior to revocation, an Egyptian entity could not transfer money out of Iran into an account held with a bank with UK operations. Now that same entity can transfer Iranian-sourced money to a bank with EU operations so long as it is done via an intermediary. *Gibson Dunn associate attorney Mark Handley assisted with this article*