

To: Our Clients and Friends

March 3, 2011

EU Libyan Sanctions Council Decision and Regulation Published

The Decision of the Council of Europe implementing and expanding on the Libyan sanctions mandated by the UN Security Council in Resolution 1970 was published today in the Official Journal of the European Union, effective on the date of its adoption on February 28, 2011. In addition, the Council adopted Council Regulation (EU) No. 204/2011 by written procedure implementing certain aspects of the Decision, which was also published in the Official Journal with an effective date of March 3, 2011, and is aimed at ensuring a uniform application of the relevant measures.

The Decision provides for an arms embargo, a ban on internal repression equipment, restrictions on admission and the freezing of funds and economic resources of persons beyond Colonel Qadhafi and his family.

The implementing Regulation prohibits the supply, directly or indirectly, to any person, entity or body in Libya or for use in Libya of equipment identified in Annex I to the Regulation as equipment that might be used for internal repression, regardless of the origin of such equipment. In addition the direct or indirect provision of technical assistance, financing or financial assistance related to items on the Common Military List and items on Annex I is prohibited.

The Regulation also provides that all funds and economic resources (broadly defined) “belonging to, owned, held or controlled by” the persons specified in UN Security Council Regulation 1970 (currently, Colonel Qadhafi and his children) and the additional persons designated by the Council in Annex III to the Regulation, shall be frozen. In addition, no funds or economic resources may be made available “directly or indirectly” to such persons.

While the Regulation does not specifically mention entities owned or controlled by the persons listed in the Annexes to the Regulation (and the Annexes do not specifically mention such entities) – unlike the UK’s The Libya (Financial Sanctions) Order 2011 and the UN Resolution – the wording of the Regulation appears to be broad enough to cover such entities. Liability does not arise if a person making funds or economic resources available “did not know, and had no reasonable cause to suspect” such action would infringe the prohibition. However, a blind eye should not be turned.

The Regulation contemplates the possibility of unfreezing funds in certain limited circumstances, including payments by a sanctioned person of amounts due under a contract arising before the sanctioned person was listed on the Annexes.

Knowing and intentional participation in activities the effect of which is to circumvent these measures is prohibited.

The Regulation applies within the EU, to EU nationals wherever located, entities incorporated or constituted under the laws of an EU Member State and legal persons in respect of business done in the EU. Penalties for violation are to be set by the EU Member States.

Prepared by: Anita C. Esslinger
Bryan Cave London
+44 20 3207 1224
acesslinger@bryancave.com

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Bryan Cave LLP International Trade Client Service Group

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Evan Y. Chuck, Partner, CSG Leader
David Stepp, Partner
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Joseph Smallhoover, Partner
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*Non-legal professionals

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