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The Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and all other powers enabling them in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, hereby orders:-

Application of EC Regulation.

1. Council Regulation (EC) No. 881/2002 of the 27th May, 2002^c imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban ("**the EU Regulation**") is, subject to the modifications in the first Schedule, applicable in Guernsey in all respects as if Guernsey were a Member State.

Freezing funds and economic resources of designated persons.

2. (1) A person must not deal with funds or economic resources belonging to, or owned, held, or controlled by, a designated person.

(2) In subsection (1) "**deal with**" means -

(a) in respect of funds -

(i) use, alter, move, allow access to or transfer,

^a Ordres en Conseil Vol. XXXV(1), p. 65.

^b Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

^c OJ L 139, 29.5.02, p. 9.

(ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or

(iii) make any other change that would enable use, including portfolio management, and

(b) in respect of economic resources, exchange or use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring, assigning or charging the resources.

(3) A person who contravenes the prohibition in subsection (1) knowing, or having reasonable cause to suspect, that the funds or economic resources belonged to or were owned, held or controlled by a designated person, is guilty of an offence.

Making funds or economic resources available to a designated person.

3. (1) A person must not make available, directly or indirectly, to or for the benefit of a designated person -

(a) funds, or

(b) economic resources.

(2) A person who contravenes the prohibition in subsection (1)(a) knowing, or having reasonable cause to suspect, that the funds were being made available (directly or indirectly) to or for the benefit of a designated person, is guilty of an offence.

(3) A person who contravenes the prohibition in subsection (1)(b) knowing, or having reasonable cause to suspect -

- (a) that the economic resources were being made available (directly or indirectly) to or for the benefit of a designated person, and
- (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services,

is guilty of an offence.

(4) For the purposes of this section -

- (a) funds or economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
- (b) "**financial benefit**" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

Technical advice, assistance and training.

4. (1) A person must not grant, sell, supply or transfer, directly or indirectly, technical advice, assistance or training related to military activities, including in particular training and assistance related to the manufacture, maintenance or use of arms or related materials of all types, to or for the benefit of a designated person.

(2) A person who contravenes the prohibition in subsection (1) knowing, or having reasonable cause to suspect, that the technical advice, assistance or training was being granted, sold, supplied or transferred (directly or indirectly) to or for the benefit of a designated person is guilty of an offence.

Exceptions.

5. (1) It is not an offence under section 2 or 3 to credit a frozen account with -

- (a) interest or other earnings due on the account, or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) It is not an offence under section 3 for a relevant institution to credit a frozen account where it receives funds transferred to the account.

(3) Section 2 applies to any funds credited to a frozen account in accordance with this section.

(4) In this section "**frozen account**" means an account with a relevant institution which is held or controlled by a designated person.

Circumventing prohibitions etc.

6. It is an offence for a person to participate knowingly and intentionally in activities the object or effect of which is (directly or indirectly) to -

- (a) circumvent a prohibition in section 2(1), 3(1) or 4(1), or

- (b) enable or facilitate the contravention of any such prohibition.

Failure to provide information or to co-operate.

7. A person who, without reasonable excuse, fails to comply with the obligation to provide information to or co-operate with the Policy Council under Article 5.1 of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

8. A person who in purported compliance with Article 5.1 of the EU Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Licences.

9. (1) The Policy Council may grant a licence to disapply a prohibition in section 2(1), 3(1) or 4(1) in relation to acts specified in the licence.

(2) A licence granted by the Policy Council under this section may be -

- (a) general or granted to a category of persons or to a particular person,
- (b) unconditional or subject to conditions, and
- (c) unlimited or limited in duration.

(3) The Policy Council may at any time vary or revoke a licence, and any conditions of a licence, granted under this section.

(4) In the exercise of its powers under this section, the Policy Council must -

- (a) consult one of Her Majesty's Principal Secretaries of State, and
- (b) have regard to any information, recommendation or advice given by that Secretary of State.

(5) A person who, for the purpose of obtaining a licence under this section, knowingly or recklessly -

- (a) provides information that is false in a material respect, or
- (b) provides or produces a document that is not what it purports to be,

is guilty of an offence.

(6) A person who purports to act under the authority of a licence granted under this section but who fails to comply with any conditions included in the licence is guilty of an offence.

Appeals against decisions of Policy Council.

10. (1) A person aggrieved by a decision of the Policy Council made under section 9 may appeal to the Ordinary Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,

- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(2) On an appeal under this section the Court may -

- (a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(3) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

Penalties and proceedings.

11. (1) A person guilty of an offence under section 2, 3, 4, 6 or 9 or paragraph 2(b) or (c) of the second Schedule is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both, or

- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the second Schedule is liable on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(3) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Certain provisions of customs Laws and excise Laws applicable.

12. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^d applies to the detention of a person for an offence under section 2, 3, 4, 6 or 9 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences,

^d Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278 and Vol. XXXIII, p. 217; Order in Council No. X of 2004.

penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under the customs Laws or excise Laws.

Information.

13. The second Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information for the purpose of ensuring compliance with the EU Regulation.

Interpretation.

14. (1) In this Ordinance, unless the context otherwise requires -

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

"**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"**designated person**" means a person, group or entity listed in Annex I to the EU Regulation,

"**EU Regulation**" has the meaning given by section 1,

"**financial services business**" has the same meaning as in the Proceeds of Crime (Bailiwick of Guernsey) Law, 1999^e,

"**Guernsey**" means the Bailiwick of Guernsey apart from Alderney and Sark,

"**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court,

"**police officer**" means -

- (a) a member of the salaried police force of the Island of Guernsey, and
- (b) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, and

includes a customs officer,

"**Policy Council**" means the States of Guernsey Policy Council,

"**relevant institution**" means -

^e Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005; No. XV of 2007 and No. XIII of 2010; Recueil d'Ordonnances Tome XXVIII, p. 266; Tome XXIX, pp. 112 and 406 and Tome XXXII, p. 666; Ordinance No. XXXVII of 2008 and Nos. XVI and XXXIV of 2010; G.S.I. No. 27 of 2002; No. 43 of 2006; No. 33 of 2007; Nos. 48 and 73 of 2008 and No. 12 of 2010; and certain sections of the Law are modified in their application to overseas confiscation orders by Recueil d'Ordonnances Tome XXVIII, p. 274.

- (a) a person (whether or not an individual) who carries on financial services business in or from within Guernsey, or
- (b) a person (not being an individual) who is incorporated or constituted under the law of Guernsey and carries on financial services business in any part of the world, and

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^f, as amended,

and other terms used in this Ordinance and the EU Regulation shall have the same meaning as in the EU Regulation.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) References in this Ordinance to the EU Regulation are references to the EU Regulation as may be further amended from time to time.

Citation and commencement.

15. (1) This Ordinance may be cited as the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011.

(2) This Ordinance shall come into force on the 24th January 2011.

^f Ordres en Conseil Vol. XXXI, p. 278.

FIRST SCHEDULE

Section 1

MODIFICATION OF THE EU REGULATION

References to competent authorities.

1. References in the EU Regulation to -
 - (a) competent authorities of the Member States,
 - (b) the competent authorities of the Member States listed in Annex II to the EU Regulation, and
 - (c) competent authorities,

shall be construed as references to the Policy Council.

Article 11.

2. In Article 11 of the EU Regulation –
 - (a) in paragraph 1, for "the territory of the Community including its airspace" substitute "Guernsey, including its airspace and its territorial waters",
 - (b) in paragraph 2, the reference to a Member State shall be construed as including Guernsey,
 - (c) in paragraph 4, the reference to the law of a Member State shall be construed as including the law of Guernsey, and

- (d) in paragraph 5, the reference to the Community shall be construed as including Guernsey.

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SECOND SCHEDULE

Section 13

INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Guernsey to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any

document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent

for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Guernsey,
- (c) on the authority of the Policy Council, to the European Commission or to any of the competent authorities listed in Annex II to the EU Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EU Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.