

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Tunisia (Freezing of Funds) (Guernsey) Ordinance, 2011 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XI of 2011; as amended by the Tunisia (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2013 (No. XIV of 2013); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

# ORDINANCE OF THE STATES OF DELIBERATION

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## **The Tunisia (Freezing of Funds) (Guernsey) Ordinance, 2011**

### ARRANGEMENT OF SECTIONS

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SCHEDULE Information.

(Made on 27th April, 2011.)

## **The Tunisia (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<sup>a</sup> and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, and all other powers enabling the States in that behalf, hereby orders: –

### **Application of, and infringement of, EU Regulation.**

1. (1) Council Regulation (EC) No. 101/2011 of the 4<sup>th</sup> February, 2011<sup>c</sup> imposing certain specific restrictive measures in view of the situation in Tunisia ("**the EU Regulation**") is, subject to such exceptions, adaptations and modifications as may be specified in this Ordinance, applicable in Guernsey in all respects as if Guernsey were a Member State.

[(2) A person who infringes, or causes or permits any infringement of, any prohibition in, or requirement of, the EU Regulation is guilty of an offence.]

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### **NOTE**

*In section 1, subsection (2) was substituted by the Tunisia (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2013, section 1(2), with effect from 18th February, 2013.*

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### **[Modification of Regulation.**

2. The EU Regulation in its application to Guernsey is modified as follows –

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

<sup>c</sup> OJ L 31, 5.2.2011, p. 1.

*Consolidated text*

- (a) Articles 1(e) and 14 shall not apply,
- (b) references to the competent authorities of or in the Member States shall be construed as references to the [Policy & Resources Committee],
- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the [Policy & Resources Committee] to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) subject to paragraph (e), references to the Member State or the Member State concerned shall be construed as references to the [Policy & Resources Committee],
- (e) references to the Member State concerned shall be construed as including Guernsey where such references concern the enforcement of decisions or public policy,
- (f) references to the Union shall be construed as including Guernsey,
- (g) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto,
- (h) references to ports of Member States shall be construed as including any port in Guernsey,
- (i) references to competent customs authorities of Member States shall be construed as including the Chief Officer of Customs and Excise,

- (j) references to nationals of Member States or from the territories of Member States shall be construed as including any person in Guernsey or from Guernsey, and
- (k) references to the law of a Member State shall be construed as including the law of Guernsey.]

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**NOTES**

*Section 2 was substituted by the Tunisia (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2013, section 1(3), with effect from 18th February, 2013.*

*In section 2, the words "Policy & Resources Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.*

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**Appeals against decisions of [Policy & Resources Committee].**

**3.** (1) A person aggrieved by a decision of the [Policy & Resources Committee] made under Article 4, 5 or 7 of the EU Regulation, or a decision of the [Policy & Resources Committee] not to exercise its powers under any of those Articles, 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 & Resources Committee] aside and, if the Court considers it appropriate to do so, remit the matter to the [Policy & Resources Committee] 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.

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**NOTE**

*In section 3, the words "Policy & Resources Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.*

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**Information.**

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the [Policy & Resources Committee], of information for the purpose of ensuring compliance with the EU Regulation.

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**NOTE**

*In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.*

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**Failure to provide information or to co-operate.**

5. A person who, without reasonable excuse, fails to comply with the obligation to provide information to or co-operate with the [Policy & Resources

Committee] under Article 9.1 of the EU Regulation is guilty of an offence.

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**NOTE**

*In section 5, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.*

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**Furnishing of false information etc.**

6. A person who in purported compliance with Article 9.1 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.

**Penalties and proceedings.**

7. (1) A person guilty of an offence under –

- (a) section 1(2), 5 or 6, or
- (b) paragraph 2(b) or (c) of the Schedule,

is liable –

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both,
- (ii) on summary conviction, to imprisonment for a term not exceeding three months, 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 Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, 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.**

8. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>d</sup> applies to the detention of a person for an offence under section 1 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, 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.

**Interpretation.**

9. (1) In this Ordinance, except where the context requires otherwise –

["**advocate**" means an advocate of the Royal Court of Guernsey,]

["**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délegué and a Judge of the Royal Court,]

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<sup>d</sup> Ordres en Conseil Vol. XXIII, p. 573; No. XIII of 1991; and No. X of 2004.



["**Chief Officer of Customs and Excise**" has the meaning given by section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,]

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

"**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,

["**enactment**" includes a Law, an Ordinance and any subordinate legislation,]

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

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

["**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008,]

"**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court and for the purposes of this Law the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats,

["**Policy & Resources Committee**]" means the States of Guernsey [Policy & Resources Committee],

["**subordinate legislation**" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect, and]

**"uniform scale of fines"** means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>e</sup>,

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

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

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## NOTES

*In section 9,*

*the definition of the expression "Bailiff" in subsection (1) was substituted, and the definitions of the expressions "advocate", "Chief Officer of Customs and Excise", "enactment", "Judge of the Royal Court" and "subordinate legislation" therein were inserted, by the Tunisia (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2013, section 1(4), respectively paragraph (a) and paragraph (b), with effect from 18th February, 2013;*

*the words in the first and second pairs of square brackets in the definition of the expression "Policy & Resources Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

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## **Citation.**

**10.** This Ordinance may be cited as the Tunisia (Freezing of Funds) (Guernsey) Ordinance, 2011.

## **Commencement.**

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<sup>e</sup> Ordres en Conseil Vol. XXXI, p. 278.

- 11.** This Ordinance shall come into force on the 21<sup>st</sup> February 2011.

SCHEDULE  
INFORMATION

Section 4

1. (1) The [Policy & Resources Committee] (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 & Resources Committee] (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 is 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 & Resources Committee], 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.

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**NOTE**

*In the Schedule, the words "Policy & Resources Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.*

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