

The Union of the Comoros (Freezing of Funds) (Sark) Ordinance, 2008

THE GENERAL PURPOSES AND ADVISORY COMMITTEE, in exercise of the powers conferred on the Chief Pleas 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 section 8A of the Sark (Reform) Law, 1951^b, hereby orders:-

Application of, and infringement of, EC Regulation.

1. (1) Council Regulation (EC) No. 243/2008 of the 17th March, 2008^c imposing certain specific restrictive measures in view of the situation on the island of Anjouan in the Union of the Comoros ("**the EC Regulation**") is applicable in Sark in all respects as if Sark were a Member State.

(2) A person who infringes, or causes or permits any infringement of, Article 2 or 6 of the EC Regulation is guilty of an offence.

Modification of Regulation.

2. The EC Regulation in its application to Sark is modified as follows -

(a) in Article 6(1)(a) -

(i) for the words "the competent authorities indicated in the websites listed in Annex II of the Member States where they are resident or located" substitute "the States of Guernsey Policy Council ("the Council") ",

(ii) for the words "through the Member States"

^a Order in Council No. III of 1994.

^b Ordres en Conseil Vol. XV, p. 215; section 8A was inserted by No. XI of 2000.

^c O.J. L.75/53, 18.3.2008.

substitute "through the Council",

- (b) in Article 6(1)(b), for the words "the competent authorities indicated in the websites listed in Annex II" substitute "the Council".

Information.

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

Penalties and proceedings.

4. (1) A person guilty of an offence under -

- (a) section 1(2) or subsection (3), 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) A person who in purported compliance with Article 6 of the EC 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.

(4) 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.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) 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 and excise Law applicable.

5. (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 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.

6. (1) In this Ordinance, except where the context requires otherwise -

"Council" means the States of Guernsey Policy Council,

^d Ordres en Conseil Vol. XXIII, p. 573; No. XIII of 1991; and No. X of 2004.

"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,

"EC Regulation" has the meaning given by section 1, and

"uniform scale of fines" means the scale of fines from time to time in force under the Uniform Scale of Fines (Sark) Law, 1989^e.

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

Citation.

7. This Ordinance may be cited as the Union of the Comoros (Freezing of Funds) (Sark) Ordinance, 2008.

Commencement.

8. This Ordinance shall come into force on the 3rd June, 2008.

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

SCHEDULE

Section 3

INFORMATION

1. (1) The 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 Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EC 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 Council, to the European Commission or to any of the competent authorities listed in Annex II to the EC Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EC 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.