

United Nations Measures enabling Freezing of Terrorist Funds

Two United Nations Resolutions [1373 and 1267] in respect of the freezing of terrorist funds or other assets have been implemented in the Bailiwick by the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (“Terrorism Order 2001”) and by the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (“Al-Qa’ida Order 2002”).

Both Orders create offences of strict liability in respect of the release of funds to persons involved in terrorism or in breach of a notice from HM Procureur.

On 4 February 2010, the Supreme Court in the United Kingdom made a ruling which quashed the Terrorism (United Nations Measures) Order, 2006. Following that decision, the Terrorist Asset-Freezing (Temporary Provisions) Act, 2010, was introduced. This makes provision for the temporary validity of the UK Order as well as confirming the validity of the Terrorism Order 2001, below. As such the following Orders must still be complied with.

The Terrorism Order 2001

Under Article 5, it is a criminal offence for any person to make any funds or financial services available to or for the benefit of persons involved in terrorism.

In addition to this general prohibition, Article 6 provides that HM Procureur, as the Bailiwick’s licensing authority, may by notice [referred to here as a Freezing of Funds Notice] direct that particular funds are not to be made available to any person, where HM Procureur has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be involved in terrorism.

It should be noted that HM Procureur may issue a licence permitting the release of specified funds which would otherwise be caught by the provisions of Articles 5 and 6. No offence is committed in respect of such funds provided that the terms of the licence are complied with.

Obligations under Freezing of Funds Notice– if you receive a Freezing of Funds Notice your obligations are twofold. You must:

- (i) Refuse to make the funds available to the person for or on behalf of whom the funds are held, unless authority has been given to release funds in accordance with the terms of a licence;
- (ii) Send a copy of the Freezing of Funds Notice, without delay, to the person whose funds they are, or on whose behalf they are held. You will be treated as complying with this requirement if, without delay, you send a copy of the Freezing of Funds Notice to the owner at his last-known address or, if you do not have an address for the owner, you make arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

Failure to comply with either of these requirements is an offence under the Terrorism Order 2001. The full text of the order is available through the link below.

The Terrorism (United Nations Measures) (Channel Islands) Order 2001 (SI 2001/3363)

The Al-Qa'ida Order 2002

This Order contains similar provisions in respect of the provision of funds to listed persons. A listed person as defined in Article 2 is (a) Usama bin Laden or (b) any person designated by the Sanctions Committee in the list maintained by that Committee in accordance with resolution 1390 adopted by the Security Council on 16th January 2002 as: (i) a member of the Al-Qa'ida organisation; (ii) a member of the Taliban; (iii) an individual, group, undertaking or entity associated with the persons covered by (a), (b)(i) or (ii) above.

Under Article 7 it is an offence for any person to make any funds available to or for the benefit of listed persons or any person acting on behalf of a listed person.

Under Article 8 of the Al-Qa'ida Order 2002, HM Procureur as the Bailiwick's licensing authority may by notice [referred to here as a Freezing of Funds Notice] direct that particular funds are not made available to any person, where he has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a listed person or a person acting on behalf of a listed person.

It should be noted that HM Procureur may issue a licence permitting the release of specified funds which would otherwise be caught by the provisions of Articles 7 and 8. No offence is committed in respect of such funds provided that the terms of the licence are complied with.

Obligations under Freezing of Funds Notice– if you receive a Freezing of Funds Notice, your obligations are twofold. You must:

- (i) Refuse to make the funds available to the person for or on behalf of whom the funds are held, unless authority has been given to release funds in accordance with the terms of a licence;
- (ii) Send a copy of the Freezing of Funds Notice, without delay, to the person whose funds they are, or on whose behalf they are held. You will be treated as complying with this requirement if, without delay, you send a copy of the Freezing of Funds Notice to the owner at his last-known address or, if you do not have an address for the owner, you make arrangements for a copy of the Freezing of Funds Notice to be supplied to the owner at the first available opportunity.

Failure to comply with either of these requirements is an offence under the Al-Qa'ida Order 2002. The full text of the order is available through the link below.

The Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (SI 2002/258)

Delisting requests

Any person within the Bailiwick who wishes to challenge or seek a review of a particular designation by the Sanctions Committee of the United Nations as set out in Article 2 should contact HM Procureur.

Applications for licences

HM Procureur will entertain applications for licences under the Terrorism Order 2001 and the Al-Qa'ida Order 2002 from any party. Such licences will normally only be issued in respect of funding for necessities such as food, medical treatment and accommodation, but funding for extraordinary expenses will also be considered.

A licence may be made subject to conditions, and it is an offence to breach any such conditions.

Applications for licences, setting out the grounds on which the application is made and including any supporting documentation, should be made in writing to HM Procureur at law@gov.gg or by post to St. James Chambers, St. Peter Port, Guernsey, GY1 4BY. It is an offence under both Orders for any person knowingly or recklessly to make a false statement or to furnish false information for the purposes of obtaining a licence.

Further information about licences is available from HM Procureur's office at the address above.

Unfreezing of funds

HM Procureur may revoke a Freezing of Funds Notice under Article 6 of the Terrorism Order 2001 or Article 8 of the Al-Qa'ida Order 2002 by notice [referred to here as a Revocation Notice] at any time. HM Procureur will entertain requests to issue a Revocation Notice from any party.

If you wish a Freezing of Funds Notice to be revoked, you should make a request in writing to HM Procureur at law@gov.gg or by post to St. James Chambers, St. Peter Port, Guernsey, GY1 4BY. Your request should set out the grounds on which a Revocation Notice is sought, for example if you or a person for whom you act are a non-listed person unconnected with terrorism whose assets have inadvertently been affected by the Freezing of Funds Notice, or if you or a person for whom you act were a listed person at the time when the Freezing of Funds Notice was issued but are now a de-listed person.

Further information about Revocation Notices is available from HM Procureur's office at the address above.

Applications to the Royal Court

Any person by, for or on behalf of whom funds are held under a Freezing of Funds Notice under either Order may apply to the Royal Court to set the Freezing of Funds Notice aside, in accordance with Article 6 of the Terrorism Order 2001 or Article 8 of the Al-Qa'ida Order 2002.

Related offences

The two Orders create various offences related to the funding of terrorism. Financial institutions should note in particular that, under both Orders, it is a criminal offence for an institution to fail to disclose its knowledge or suspicion that a present or former customer is involved in terrorism, is a listed person or has committed any of the specified offences in the Orders.

Further information

The United Nations and the European Union have also each imposed sanctions against specified countries and/or those who are or were involved in their government. Any person or body considering entering into any form of financial or other types of business relationship that is in any way connected with the countries or subjects referred to in that sanctions must exercise great caution and closely consider the details contained within the sanctions orders and associated local ordinances.

Many of the sanctions prohibit the provision of financial services or assistance to named individuals or entities the full list of individuals and entities may be found in the financial sanctions section of the HM Treasury website at:

http://www.hm-treasury.gov.uk/fin_sanctions_index.htm

Copies of Statutory Instruments (SI's), which apply in the Bailiwick, regarding sanctions may be obtained from the Office of Public Sector Information (OPSI) website which lists all draft and current UK SI's passed since 1987:

www.opsi.gov.uk/stat/htm

The Foreign and Commonwealth Office (FCO) website contains a page which lists all current UK Export Controls and Sanctions in force. This can be accessed through the "Business and Trade" section of the FCO website. The FCO website also contains a link to the OPSI, UN and EU websites enabling the searching of these sites for current \UK, UN and EU sanctions and trade embargoes:

www.fco.gov.uk

Contact

HM Procureur's office should be contacted if you require further information.

Contact details –

Email - law@gov.gg

Post to St. James Chambers, St. Peter Port, Guernsey, GY1 4BY.

Telephone/fax 01481 723355/725439

It should be noted that any breach of sanctions may result in criminal prosecution and the imposition of a lengthy prison sentence and/or a heavy fine. If in doubt as to your position in relation to sanctions you should take professional legal advice.