

Export Control

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA SANCTIONS ORDER 2016

2005-33

Repealed
Subsidiary
2016/161

Subsidiary Legislation made under ss.3, 4, 5, 6, 7 and 9 of the Export Control Act 2005, section 23(g)(i) of the Interpretation and General Clauses Act.

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA SANCTIONS ORDER 2016

Repealed by LN. 2018/002 as from 4.1.2018

(LN. 2016/161)

Commencement **29.7.2016**

Amending enactments	Relevant current provisions	Commencement date
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Transposing:

EU Legislation/International Agreements involved:

Council Regulation (EC) No.329/2007

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In the exercise of the powers conferred upon him by sections 3, 4, 5, 6, 7 and 9 of the Export Control Act 2005, section 23(g)(i) of the Interpretation and General Clauses Act and all other enabling powers, for the purpose of implementing Council Regulation (EC) No.329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea as amended, the Minister has made the following Order—

Part 1 **Preliminary**

Title.

1. This Order may be cited as the Democratic People's Republic of Korea Sanctions Order 2016.

Commencement.

2. This Order shall come into operation on the day of publication.

Interpretation.

- 3.(1) In this Order—

“Council Decision 2013/183/CSFP” means Council Decision 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/CFSP;

“the Council Regulation” means Council Regulation (EU) No. 329/2007 of 27 March 2007 concerning restrictive measures against Democratic People's Republic of Korea as amended from time to time, and a reference to an Annex to that Regulation is to be construed as a reference to that Annex as amended from time to time;

“designated person” means any natural, or legal person, entity or body included in the list provided for by Annex IV, V or Va to the Council Regulation as may be amended from time to time;

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form;

“financial services” means any service of a financial nature;

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“funds” shall have the meaning assigned to it by paragraph 4(1);

“the Minister” means the Minister with responsibility for finance;

“North Korea” means the Democratic People’s Republic of Korea;

“relevant institution” has the meaning assigned to it by paragraph 5; and

“technical assistance” means any technical support related to repairs, development; manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance.

(2) Any expression used both in this Order and in the Council Regulation has the meaning it bears in the Council Regulation.

Part 2

Prohibitions in relation to designated persons

Meaning of “funds” and “economic resources”.

4.(1) Unless the context otherwise requires—

“funds” means financial assets and benefits of every kind, including but not limited to—

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- (c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (d) interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale; and

- (g) documents evidencing an interest in funds or financial resources;

(2) "Economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, actual or potential which are not funds but can be used to obtain funds, goods or services, including vessels, such as maritime vessels.

Meaning of "relevant institution".

5. "Relevant institution" means—

- (a) a person licenced or authorised under the Financial Services (Investment and Fiduciary Services) Act 1989 or the Financial Services (Banking Act) 1992 to carry on regulated activity; or
- (b) an undertaking that by way of business—
 - (i) operates a currency exchange office;
 - (ii) transmits money (or any representation of monetary value) by any means; or
 - (iii) cashes cheques that are made payable to customers.

Freezing of funds and economic resources.

6.(1) A person ("P") must not deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In subparagraph (1) "deal with" means—

- (a) in relation to funds—
 - (i) use, alter, move, allow access to or transfer;
 - (ii) deal with the funds 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 relation to economic resources, exchange, or use in exchange, for funds, goods or services.

(3) Subparagraph (1) is subject to paragraph 13.

Making funds available to a designated person.

7.(1) A person ("P") must not make funds available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) Subparagraph (1) is subject to paragraphs 12 and 13.

Making funds available for the benefit of a designated person.

8.(1) A person ("P") must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) For the purposes of this paragraph—

- (a) funds 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.

(3) Subparagraph (1) is subject to paragraphs 12 and 13.

Making economic resources available to a designated person.

9.(1) A person ("P") must not make economic resources available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect—

- (a) that P is making the economic resources so available; and
- (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

(2) Subparagraph (1) is subject to paragraph 13.

Making economic resources available for the benefit of a designated person.

10.(1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.

(2) For the purposes of this paragraph—

- (a) 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.

(3) Subparagraph (1) is subject to regulation 13.

Funds and economic resources: Government of Democratic People’s Republic of Korea and Worker’s Party Korea.

11.(1) The Minister may direct that the provisions of paragraphs 7 to 10 apply in relation to a person as if that person were a designated person.

(2) The Minister may only make a direction under subparagraph (1)—

- (a) in respect of a person within a category listed in subparagraph (3); and
- (b) when the conditions in subparagraph (4) are satisfied.

(3) Categories of persons in respect of whom a direction may be made are—

- (a) a person associated with the Government of North Korea;
- (b) a person associated with the Worker’s Party of Korea;
- (c) a person acting on behalf or at the direction of any person within the categories listed in subparagraph (a) or (b); or
- (d) a person owned or controlled by any person listed within the categories in subparagraph (a) or (b).

(4) The conditions in this subparagraph are satisfied if—

- (a) funds and economic resources have been or are likely to be made available to a person for a purpose other than that of a diplomatic or consular mission, including a mission to the United Nations; and
- (b) the Minister considers that the person is associated with nuclear-related, other weapons of mass destructions-related, or ballistic missile-related programmes, or other activities prohibited by the Council Regulation.

(5) A credit or financial institution must inform the Minister if it suspects that funds or economic resources have been or are likely to be made available to any person listed in a category in subparagraph (3) for a purpose other than that of a diplomatic or consular mission.

(6) Any direction made under subparagraph (1) must be—

- (a) published by the Minister in the Gazette;
- (b) sent by the Minister to one or more credit and financial institutions; or
- (c) sent by the Minister to one or more other persons.

Credits to a frozen account.

12.(1) The prohibitions in paragraphs 7 and 8 are not contravened by a person who credits 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) The prohibitions in paragraphs 7 and 8 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) A relevant institution must inform the Minister without delay if it credits a frozen account in accordance with subparagraph (1)(b) or (2).

(4) In this paragraph “frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person.

Licences.

13.(1) The prohibitions in paragraphs 6 to 11, 14(3) and 19(2) do not apply to anything done under the authority of a licence granted by the Minister.

(2) A licence must specify the acts authorised by it and may be—

- (a) general or granted to a category of persons or to a particular person;
- (b) subject to conditions; or
- (c) of indefinite duration or subject to an expiry date.

(3) The Minister may vary or revoke a licence at any time.

(4) On the grant, variation or revocation of a licence, the Minister must—

- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person; and
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Minister considers appropriate to publicise the grant, variation or revocation of the licence.

(5) A person commits an offence who, for the purpose of obtaining a licence, 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.

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

Part 3

Restrictions on Financial Services

Credit and Financial institutions: accounts and correspondent banking relationships.

14.(1) A credit or financial institution must not–

- (a) open a new bank account with,
- (b) establish a new correspondent banking relationship with,
- (c) establish a new joint venture with, or
- (d) take an ownership interest in,

a person falling within subparagraph (2), if the credit or financial institution knows or has reasonable cause to suspect that the account, relationship or venture is with, or the ownership interest is in, a person falling with subparagraph (2).

(2) The following persons fall within this subparagraph–

- (a) a credit or financial institution domiciled in North Korea;
- (b) a branch or subsidiary, wherever located, of a credit or financial institution domiciled in North Korea as listed in Annex VI of the Council Regulation;
- (c) a credit or financial institution wherever located that is not domiciled in North Korea but is controlled by a person or entity domiciled in North Korea, as listed in Annex VI of the Council Regulation.

(3) A credit or financial institution must not–

- (a) open a new representative office in North Korea; or
- (b) establish a new branch or subsidiary in North Korea.

Agreements.

15. A person (“P”) must not conclude an agreement for, or on behalf of, a person falling within paragraph 14(2) which relates to the opening of a representative office or the establishment of a branch or subsidiary in the European Union, if P knows or has reasonable cause to suspect that the agreement is for, or on behalf of, such a person.

Acquisition or extension of ownership interest.

16. A person falling within paragraph 14(2) must not acquire or extend a participation, or acquire any other ownership interest, in a credit or financial institution.

Sale or purchase of bonds.

17.(1) A person ("P") must not sell or purchase public or public-guaranteed bonds issued after 19th February 2013, directly or indirectly, to or from a person, entity or body falling within subparagraph (4) if P knows or has reasonable cause to suspect that the sale or purchase is to or from such a person, entity or body.

(2) A person ("P") must not provide brokering services with respect to public or public-guaranteed bonds issued after 19th February 2013 to a person, entity or body falling within subparagraph (4) if P knows or has reasonable cause to believe that the services are being provided to such a person, entity or body.

(3) A person ("P") must not assist a person, entity or body falling within subparagraph (4) to issue public or public-guaranteed bonds, by providing–

- (a) brokering services;
- (b) advertising; or
- (c) any other service with respect to such bonds,

if P knows or has reasonable cause to suspect that P is assisting such a person, entity or body.

(4) The following persons, entities and bodies fall within this paragraph–

- (a) North Korea and its Government, and its public bodies, corporations and agencies;
- (b) the Central Bank of North Korea;
- (c) a credit or financial institution domiciled in North Korea or any credit or financial institution referred to in paragraph 14(2);
- (d) a person, entity or body acting on behalf of or at the direction of a legal person, entity or body falling within subparagraphs (a) or (b); and
- (e) a legal person, entity or body owned or controlled by a person, entity or body falling within subparagraphs (a) to (c).

DPRK credit and financial institutions: branches, subsidiaries, and representative offices.

18. A person falling within paragraph 14(2) must not open a–

- (a) branch;
- (b) subsidiary; or
- (c) representative office,

within Gibraltar.

Severance of existing financial relationships.

19.(1) A credit or financial institution must, by 31st May 2016–

- (a) terminate any joint venture with;
- (b) relinquish any ownership interest in; and
- (c) terminate any correspondent banking relationship with;

a person falling within paragraph 14(2).

(2) The Minister may direct that a credit or financial institution must–

- (a) close any bank account with a person falling within paragraph 14(2); or
- (b) close any branch, subsidiary, or representative office in North Korea.

(3) The Minister may make a direction under subparagraph (2) only if he is satisfied that any such account, branch, subsidiary, or representative office could contribute to–

- (a) the nuclear-related, other weapons of mass destructions-related, or ballistic missile-related programmes of North Korea;
- (b) other activities prohibited under the Council Regulation;
- (c) other activities prohibited under Council Decision 2013/183/CSFP; or

- (d) the circumvention of prohibitions that apply in relation to such activities.

(4) A credit or financial institution must inform the Minister if it suspects that any such account, branch, subsidiary or representative office might contribute to any of the activities listed in subparagraph (3).

(5) Any direction made under subparagraph (2) must be—

- (a) published by the Minister in the Gazette;
- (b) sent by the Minister to one or more credit and financial institutions; or
- (c) sent by the Minister to one or more other persons.

Business directly or indirectly with designated persons.

20. A credit or financial institution must not participate in any business arrangements, including joint ventures, with—

- (a) any person listed in Annex IV of the Council Regulation; or
- (b) any other person acting on behalf or at the direction of such a person.

Financial support for trade.

21.(1) A person may not provide any financial support for trade which may contribute to—

- (a) nuclear-related programmes;
- (b) other weapons of mass destruction-related programmes;
- (c) ballistic missile-related programmes; or
- (d) other activities prohibited by the Council Regulation.

(2) In subparagraph (1), financial support for trade includes, but is not limited to—

- (a) finance;
- (b) financial assistance;

- (c) export credits;
 - (d) guarantees; and
 - (e) insurance.
- (3) The prohibition in subparagraph (1) does not apply to—
- (a) contracts and agreements for the provision of financial support entered into prior to the date of publication of this Order; and
 - (b) contracts and agreements for the provision of financial support for trade in food, agricultural, medical or humanitarian purposes.

Investment and commercial activities.

22.(1) A person must not accept or approve investment in a commercial activity made by a person listed in subparagraph (6).

(2) A person must not grant financing or financial assistance to any legal person listed in subparagraph (6)(d) to (f) or for the documented purpose of financing such legal persons.

(3) A person must not establish a joint venture with a legal person listed in subparagraph (6) if that person is engaged in any activities listed in subparagraph (7).

(4) A person may not acquire or extend any ownership interest in a legal person listed in subparagraph (6) if that person is engaged in any activities listed in subparagraph (7).

(5) A person must not provide investment services directly related to any activity that is prohibited by subparagraphs (2) to (4).

(6) The persons listed in this subparagraph are—

- (a) a person associated with the Government of North Korea;
- (b) a person associated with the Worker's Party of Korea;
- (c) a national of North Korea;
- (d) a legal person, entity or body incorporated or constituted under the law of North Korea;

- (e) a person, entity or body acting on behalf of or at the direction of a person, entity or body falling within subparagraphs (a) to (d); or
- (f) a legal person, entity or body owned or controlled by a person, entity or body falling within subparagraphs (a) to (d).

(7) The activities listed in this paragraph are–

- (a) the nuclear-related, other weapons of mass destructions-related, or ballistic missile-related programmes of North Korea;
- (b) mining industry;
- (c) refining industry; and
- (d) chemical industry.

Transfer of funds.

23.(1) Subject to subparagraph (3) a person (“P”) must not make a transfer of funds to, or receive a transfer of funds from, North Korea.

(2) Subject to subparagraph (3) a credit and financial institution falling within the scope of Article 16 of the Council Regulation must not enter into, or continue to participate in, any transaction with–

- (a) credit and financial institutions domiciled in North Korea;
- (b) branches or subsidiaries falling within the scope of Article 16 of the Council Regulation of credit and financial institutions domiciled in North Korea, as listed in Annex VI to the Council Regulation;
- (c) branches or subsidiaries falling outside of the scope of Article 16 of the Council Regulation of credit and financial institutions domiciled in North Korea, as listed in Annex VI to the Council Regulation;
- (d) credit and financial institutions that are neither domiciled in North Korea nor fall within the scope of Article 16 of the Council Regulation, but are controlled by persons listed in Annex VI of the Council Regulation.

- (3) A transfer of funds may be made if–
- (a) the transfer relates to a transaction mentioned in subparagraph (4); and
 - (b) where the value of the transfer is over €15,000, P or the institution has obtained prior authorisation from the Minister.
- (4) The transactions are–
- (a) transactions regarding foodstuffs, healthcare or medical equipment;
 - (b) transactions for agricultural or humanitarian purposes;
 - (c) transactions regarding personal remittances;
 - (d) transactions that have been licensed under paragraph 13;
 - (e) transactions that are permitted under an exemption contained in the Council Regulation;
 - (f) transactions regarding a trade contract that is not prohibited by the Council regulation;
 - (g) transactions regarding the official purposes of a diplomatic or consular mission of North Korea;
 - (h) transactions regarding the official purposes of a diplomatic or consular mission of a state other than North Korea;
 - (i) transactions regarding the official purposes of an international organisation enjoying immunities in accordance with international law;
 - (j) transactions required exclusively for the purposes of implementing projects funded by the European Union or its Member States which address the needs of the civilian population of North Korea or the promotion of denuclearisation; and
 - (k) transactions for payments which satisfy claims against–
 - (i) North Korea;
 - (ii) a national of North Korea; and

- (iii) a legal person, entity or body incorporated or constituted under the law of North Korea;

(5) The requirement for prior authorisation in subparagraph (3)(b) shall not apply to any transaction which falls within subparagraphs (4)(h) or (i).

(6) In this paragraph—

- (a) a reference to an amount in euro includes a reference to the equivalent amount in another currency; and
- (b) a reference to a transfer of funds of a particular amount includes a transfer executed in several operations which appear to be linked, as well as a transfer executed in a single operation.

Authorisation.

24.(1) An authorisation granted by the Minister under paragraph 23 may be—

- (a) general or granted to a category of persons or to a particular person;
- (b) subject to conditions; or
- (c) of indefinite duration or subject to an expiry date.

(2) The Minister may vary or revoke an authorisation at any time.

(3) On the grant, variation or revocation of an authorisation, the Minister must—

- (a) in the case of an authorisation granted to a particular person, give written notice of the grant, variation or revocation to that person;
- (b) in the case of a general authorisation or an authorisation granted to a category of persons, take such steps as the Minister considers appropriate to publicise the grant, variation or revocation of the authorisation.

(4) A person commits an offence who, for the purpose of obtaining an authorisation, knowingly or recklessly—

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- (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.

(5) A person who purports to act under an authorisation granted by the Minister but who fails to comply with any conditions included in the authorisation commits an offence.

Contravention and circumvention of prohibitions.

25.(1) A person who contravenes any of the prohibitions in paragraphs 6 to 11 and 14 to 23 commits an offence.

(2) A person commits an offence who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly)–

- (a) to circumvent any of the prohibitions in paragraphs 6 to 11 and 14 to 23; or
- (b) to enable or facilitate the contravention of any such prohibition or requirement.

Part 4 **Information**

Reporting obligations of relevant institutions.

26.(1) A relevant institution must inform the Minister as soon as practicable if–

- (a) it knows, or has reasonable cause to suspect, that a person–
 - (i) is a designated person; or
 - (ii) has committed an offence under paragraph 13 or 25; and
- (b) the information or other matter on which the knowledge or suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant institution informs the Minister under subparagraph (1), it must state–

- (a) the information or other matter on which the knowledge or suspicion is based; and
 - (b) any information it holds about the person by which the person can be identified.
- (3) Subparagraph (4) applies if—
- (a) a relevant institution informs the Minister under subparagraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated person; and
 - (b) that person is a customer of the institution.
- (4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer.
- (5) A relevant institution that fails to comply with any requirement of subparagraph (1), (2) or (4) commits an offence.

Powers to request information.

27.(1) The Minister may request a designated person to provide information concerning—

- (a) funds or economic resources owned, held or controlled by or on behalf of the designated person; or
 - (b) any disposal of such funds or economic resources.
- (2) The Minister may request a designated person to provide such information as he may reasonably require about expenditure—
- (a) by or on behalf of the designated person; or
 - (b) for the benefit of the designated person.
- (3) The power in subparagraph (1) or (2) is exercisable only where the Minister believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Order.
- (4) The Minister may request a person acting under a licence granted under paragraph 13 to provide information concerning—
- (a) funds or economic resources dealt with under the licence; or

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(b) funds or economic resources made available under the licence.

(5) The Minister may request any person in or resident in Gibraltar to provide such information as he may reasonably require for the purpose of—

(a) establishing for the purpose of this Order—

(i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person;

(ii) the nature and amount or quantity of any funds or economic resources made available directly or indirectly to, or for the benefit of, a designated person; or

(iii) the nature of any financial transactions entered into by a designated person;

(b) monitoring compliance with or detecting evasion of this Order;
or

(c) obtaining evidence of the commission of an offence under this Order.

(6) The Minister may specify the manner in which, and the period within which, information is to be provided.

(7) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(8) A request may include a continuing obligation to keep the Minister informed as circumstances change, or on such regular basis as the Minister may specify.

(9) Information requested under this paragraph may relate to any period of time during which a person is, or was, a designated person.

(10) Information requested under subparagraph (1)(b), (2) or (5)(a)(iii) may relate to any period of time before a person became a designated person (as well as, or instead of, any subsequent period of time).

Production of documents.

28.(1) A request under subparagraph 2 may include a request to produce specified documents or documents of a specified description.

- (2) Where the Minister request that documents be produced, he may–
- (a) take copies of or extracts from any document so produced;
 - (b) request any person producing a document to give an explanation of it; and
 - (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is–
 - (i) in the case of a partnership, a present or past partner or employee of the partnership,
 - (ii) in any other case, a present or past officer or employee of the body concerned,to give such an explanation.

(3) Where the Minister requests a designated person or a person acting under a licence granted under paragraph 13 to produce documents, that person must–

- (a) take reasonable steps to obtain the documents (if not already in the person's possession or control);
- (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Minister or as the Minister may otherwise permit).

Failure to comply with request for information.

29.(1) A person commits an offence 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 any request made under this Part;
- (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade the provisions of this Part, destroys, mutilates, defaces, conceals or removes any document; or

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- (d) otherwise intentionally obstructs the Minister in the exercise of his powers under this Part.

(2) Where a person is convicted of an offence under this paragraph, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

General power to disclose information.

30.(1) The Minister may disclose any information obtained by them pursuant to this Order—

- (a) to a police officer;
- (b) to the Gibraltar Financial Services Commission;
- (c) for the purpose of giving assistance or co-operation, pursuant to the Council Regulation, to—
 - (i) any organ of the United Nations; or
 - (ii) the Council of the European Union, the European Commission or the Government of a Member State;
- (d) with a view to instituting, or otherwise for the purposes of, any proceedings—
 - (i) in Gibraltar, for an offence under this Order; or
 - (ii) in the United Kingdom, in any other Member State of the European Union, in any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a similar provision in any such jurisdiction; or
- (e) with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract, to any third party.

(2) In subparagraph (1)(e) “in their own right” means not merely in the capacity as a servant or agent of another person.

Application of provisions.

31.(1) Nothing done under this Part is to be treated as a breach of any restriction imposed by statute or otherwise.

(2) But nothing in this Schedule authorises a disclosure that contravenes the Data Protection Act 2004.

(3) Nothing in this Part is to be read as requiring a person who has acted as counsel or solicitor for any person to disclose any privileged information in their possession in that capacity.

(4) This Part does not limit the circumstances in which information may be disclosed apart from this Part.

(5) This Part does not limit the powers of the Minister to impose conditions in connection with the discharge of his functions under paragraph 13.

(6) In this paragraph “privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

Part 5 Supplementary Provisions

Penalties.

32.(1) A person guilty of an offence under paragraph 13, 24 or 25 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 the statutory maximum or to both.

(2) A person guilty of an offence under paragraph 26(5) or paragraph 29(1) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Extra-territorial application of offences.

33.(1) An offence under this Order may be committed by conduct wholly or partly outside Gibraltar by—

- (a) a British person; or
- (b) a body incorporated or constituted under the laws of Gibraltar.

- (2) In subparagraph (1) “British person” means–
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who under the British Nationality Act 1981 is a British subject; or
 - (c) a British protected person within the meaning of that Act.
- (3) In this paragraph “conduct” includes acts and omissions.
- (4) Nothing in this paragraph affects any criminal liability arising otherwise than under this paragraph.

Officers of a body corporate etc.

- 34.(1) Where an offence under this Order committed by a body corporate–
- (a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; or
 - (b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is liable to be proceeded against and punished accordingly.

(2) In subparagraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Subparagraph (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference–

- (a) in the case of a partnership, to a partner;
- (b) in the case of an unincorporated body other than a partnership-
 - (i) where the body's affairs are managed by its members, to a member of the body;
 - (ii) in any other case, to a member of the governing body.

Consent to prosecution.

35.(1) No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney-General.

(2) Nothing in subparagraph (1) prevents—

- (a) the arrest of a person in respect of an offence under this Order;
or
- (b) the remand in custody or on bail of any person charged with such an offence.

Notices.

36.(1) This paragraph applies in relation to any notice to be given to a person by the Minister under paragraph 13.

(2) Any such notice may be given—

- (a) by posting it to the person's last known address; or
- (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.

(3) Where the Minister does not have an address for the person, he must make arrangements for the notice to be given to the person at the first available opportunity.

Crown application.

37.(1) This Order binds the Crown in the right of the Government of Gibraltar.

(2) No contravention by the Crown in right of the Government of Gibraltar of a provision of this Order make the Crown criminally liable.

(3) Nothing in this paragraph affects Her Majesty in her private capacity.