

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3842 of 31st March, 2011

LEGAL NOTICE NO. 40 OF 2011.

EXPORT CONTROL ACT 2005

**EXPORT CONTROL (SANCTIONS ETC.) (AMENDMENT) ORDER
2011**

In exercise of the powers conferred upon him by sections 3, 4, 5, 6, 7 and 9 of the Export Control Act 2005, and all other enabling powers, the Minister has made the following Order—

Title and commencement.

1. This Order may be cited as the Export Control (Sanctions etc.) (Amendment) Order 2011 and comes into operation on the day of publication.

Amendments to the Export Control (Sanctions etc.) Order 2006.

2. The Export Control (Sanctions etc.) Order 2006 (“the Order”) is amended as follows—

(a) after paragraph 6 by inserting the following paragraphs—

“Meaning of “funds”.

7. “Funds” means financial assets and economic benefits of any kind, including (but not limited to)—

- (a) gold, cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;

- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities;
- (d) bonds, notes, warrants, debentures and derivative products interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources;
- (h) any other instrument of export financing; and
- (i) economic resources, which are not funds but which may be used to obtain funds, goods or services.

Credits to a frozen account.

- 8.(1) The prohibitions in paragraph 5 of the Order are not contravened by a relevant financial institution crediting 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 paragraph 5 of the Order on making funds available do not prevent a relevant financial institution from crediting a frozen account where it receives funds transferred to the account.

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

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

Extra-territorial application.

9.(1) An offence committed 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 law of Gibraltar

(2) In subparagraph (1)—

“conduct” includes acts and omissions.

Consent to prosecutions.

10.(1) Proceedings for an offence under this Order may not be instituted except by or with the consent of the Attorney General.

Information provisions.

11. Schedule 5 (which contains provisions concerning information gathering and disclosure) has effect.”.

(b) Schedule 4 to the Order is amended as follows—

(i) under the heading “Country”, after the entry “Moldova” insert “Libya”; and

(ii) at the end of the Schedule insert—

“LIBYA

PERSONS DESIGNATED IN ANNEX II TO UN SECURITY COUNCIL RESOLUTION 1970 (2011) ON 26 FEBRUARY 2011

ADDITIONS

Individuals

1. QADHAFI, Aisha, Muammar

DOB: 1978

POB: Tripoli, Libya

Other Information: Daughter of Muammar Qadhafi. Closeness of association with regime.

2. QADHAFI, Hannibal, Muammar

DOB: 20 September 1975

POB: Tripoli, Libya

Passport Details: B/002210

Other Information: Son of Muammar Qadhafi. Closeness of association with regime.

3. QADHAFI, Khamis, Muammar

DOB: 1978

POB: Tripoli, Libya

Other Information: Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

4. QADHAFI, Muammar, Mohammed, Abu Minyar

DOB: 1942

POB: Sirte, Libya

Other Information: Leader of the Revolution, Supreme Commander of Armed Forces. Responsibility for ordering repression of demonstrations, human rights abuses.

5. QADHAFI, Mutassim DOB: 1976

POB: Tripoli, Libya

Position: National Security Adviser

Other Information: Son of Muammar Qadhafi. Closeness of association with regime.

6. QADHAFI, Saif al-Islam /Saif al -Arab

DOB: 25 June 1972

POB: Tripoli, Libya

Passport Details: B014995

Position: Director Qadhafi Foundation

Other Information: Son of Muammar Qadhafi. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.

ADDITIONS

Entities

1. Central Bank of Libya

Under control of Muammar Qadhafi and his family; and potential source of funding for his regime.

2. Libyan Investment Authority (also known as Libyan Arab Foreign Investment Company (LAFICO))

Address: 1 Fateh Tower Office, No. 99 22nd Floor, Borgaida, Street, Tripoli, Libya, 1103

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

3. Libyan Foreign Bank

Under control of Muammar Qadhafi and his family and a potential source of funding for his regime.

4. Libyan Africa Investment Portfolio

Address: Jamahiriya Street, LAP Building, PO Box 91330, Tripoli, Libya

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

5. Libyan National Oil Corporation

Address: Bashir Saadwi Street, Tripoli, Tarabulus, Libya

Under control of Muammar Qadhafi and his family and potential source of funding for his regime.

COUNCIL REGULATION (EU) NO 204/2011 – ANNEX III

ADDITIONS

Individuals

1. ABDULHAFIZ, Mas'ud

Title: Colonel

Position: Armed Forces Commander.

Other Information: 3rd in command of Armed Forces. Significant role in Military Intelligence.

2. ABDUSSALAM, Abdussalam, Mohammed

DOB: 1952

POB: Tripoli, Libya

Position: Head Counter-Terrorism, External Security Organisation.

Other Information: Prominent Revolutionary Committee member. Close associate of Muammar Qadhafi.

3. ABU SHAARIYA

Position: Deputy Head, External Security Organisation.

Other Information: Prominent member of regime. Brother-in-law of Muammar Qadhafi.

4. AL-BAGHDADI, Abdulqader, Mohammed

Title: Dr

DOB: 1 July 1950

Passport Details: B010574

Position: Head of the Liaison Office of the Revolutionary Committees.

Other Information: Revolutionary Committees involved in violence against demonstrators.

5. AL-BARASSI, Safia, Farkash

DOB: 1952

POB: Al Bayda, Libya

Other Information: Wife of Muammar Qadhafi. Closeness of association with regime.

6. AL-SENUSSI, Abdullah

Title: Colonel

DOB: 1949

POB: Sudan

Position: Director Military Intelligence.

Other Information: Military intelligence involvement in suppression of demonstrations. Past history includes suspicion of involvement in Abu Selim prison massacre. Convicted in absentia for bombing of UTA flight. Brother-in-law of Muammar Qadhafi.

7. ASHKAL, Al-Barrani

Position: Deputy Director, Military Intelligence.

Other Information: Senior member of regime.

8. ASHKAL, Omar

POB: Sirte, Libya

Position: Head, Revolutionary Committees Movement.

Other Information: Revolutionary Committees involved in violence against demonstrators.

9. DIBRI, Abdulqader, Yusef

DOB: 1946

POB: Houn, Libya

Position: Head of Muammar Qadhafi's personal security.

Other information: Responsibility for regime security. History of directing violence against demonstrators.

10. DORDA, Abu Zayd, Umar

Position: Director, External Security Organisation.

Other information: Regime loyalist. Head of external intelligence agency.

11. FARKASH, Mohammed, Boucharaya

DOB: 1 July 1949

POB: Al-Bayda

Position: Director of intelligence in External Security Office.

Other Information: Closeness of association with regime.

12. JABIR, Abu Bakr, Yunis

Title: Major General

DOB: 1952

POB: Jalo, Libya

Position: Defence Minister.

Other information: Overall responsibility for actions of security forces.

13. MATUQ, Matuq, Mohammed

DOB: 1956

POB: Khoms

Position: Secretary for Utilities.

Other information: Senior member of regime. Involvement with Revolutionary Committees. Past history of involvement in suppression of dissent and violence.

14. QADHAF AL-DAM, Ahmed, Mohammed

DOB: 1952

POB: Egypt

Other information: Cousin of Muammar Qadhafi. Since 1995, he is believed to have had command of an elite army battalion in charge of Qadhafi's personal security and to have a key role in External Security Organisation. He has been involved in planning operations against Libyan dissidents abroad and was directly involved in terrorist activity.

15. QADHAF AL-DAM, Sayyid, Mohammed

DOB: 1948

POB: Sirte, Libya

Other Information: Cousin of Muammar Qadhafi. In the 1980s, Sayyid was involved in the dissident assassination campaign and allegedly responsible for several deaths in Europe. He is also thought to have been involved in arms procurement.

16. QADHAFI, Mohammed, Muammar

DOB: 1970

POB: Tripoli, Libya

Position: Chairman of Libya's General Post and Telecommunications Company.

Other Information: Son of Muammar Qadhafi. Closeness of association with regime.

17. QADHAFI, Saadi

DOB: 25 May 1973

POB: Tripoli, Libya

Passport Details: 014797

Position: Commander Special Forces.

Other Information: Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

18. QADHAFI, Saif, Al-Arab

DOB: 1982

POB: Tripoli, Libya

Other Information: Son of Muammar Qadhafi. Closeness of association with regime.

19. SALEH, Bachir

DOB: 1946

POB: Traghen

Position: Head of Cabinet of the Leader.

Other Information: Closeness of association with regime.

20. TOHAMI, Khaled

Title: General

DOB: 1946 POB: Genzur

Position: Director of Internal Security Office.

Other Information: Closeness of association with regime.”.

(c) after Schedule 4 to the Order insert the following Schedule–

“SCHEDULE 5

INFORMATION PROVISIONS

Reporting obligations of relevant financial institutions.

1.(1) A relevant financial 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 5 of the Export Control (Sanctions etc.) Order 2006; 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 financial institution informs the Minister under sub-paragraph (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) Sub-paragraph (4) applies if–
 - (a) a relevant financial institution informs the Minister under sub-paragraph (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 financial institution.
- (4) The relevant institution must also state the nature and amount or quantity of any funds, other financial assets or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.
- (5) A relevant institution that fails to comply with any requirement of sub-paragraphs (1), (2) or (4) commits an offence.

Powers to request information.

- 2.(1) The Minister may request a designated person to provide information concerning–
- (a) funds, other financial assets owned, held or controlled by or on behalf of the designated person, or
 - (b) any disposal of such funds, other financial assets.

(2) The Minister may request a designated person to provide such information as the Minister may reasonably require about expenditure—

- (a) by or on behalf of the designated person, or
- (b) for the benefit of a designated person.

(3) The power in sub-paragraph (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 6 of the Export Control (Sanctions etc) Order to provide information concerning—

- (a) funds, other financial assets dealt with under the licence, or
- (b) funds, other financial assets made available under the licence.

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

- (a) establishing for the purposes of this Order—
 - (i) the nature and amount or quantity of any funds, other financial assets or economic resources owned, held or controlled by or on behalf of a designated person; or
 - (ii) the nature and amount or quantity of any funds, other financial assets or economic resources made available 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 shall 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 sub-paragraph (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.

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

(2) Where the Minister requests 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 6 of the Export Control (Sanctions etc.) Order 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 direct).

Failure to comply with request for information.

4.(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 Schedule;
- (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 Schedule, destroys, mutilates, defaces, conceals or removes any document; or
- (d) otherwise intentionally obstructs the Minister in the exercise of his powers under this Schedule.

(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.

5.(1) The Minister may disclose any information obtained by him in the exercise of his powers under this Order (including any document so obtained and any copy or extract made of any document so obtained)—

- (a) to a police or customs officer;

- (b) to any person holding or acting in any office under or in the service of the Crown in right of the Government of Gibraltar;
- (c) to the Financial Services Commission;
- (d) for the purpose of giving assistance or co-operation, pursuant to the Security Council Resolutions or EU instruments listed in Schedule 4 to: (i) any organ of the United Nations, or (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;
- (e) with a view to instituting, or otherwise for the purposes of, any proceedings in Gibraltar for an offence under this Order;
- (f) 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 sub-paragraph (1)(e) “in their own right” means not merely in the capacity as a servant or agent of another person.

Application of provisions.

6.(1) Nothing done under this Schedule 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 Schedule 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 Schedule does not limit the circumstances in which information may be disclosed apart from this Schedule.

(5) This Schedule does not limit the powers of the Minister to impose conditions in connection with the discharge of his functions under paragraph 5 of the Export Control (Sanctions etc.) Order 2006.

(6) In this paragraph–

“information” includes documents;

“privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.”.

Dated 31st March, 2011.

J J HOLLIDAY,
Minister with responsibility for enterprise, development,
technology and transport.

EXPLANATORY MEMORANDUM

This Order amends the Export Control (Sanctions etc) Order 2006 to give effect to UNSCR 1970 (2011) of 26 February 2011 concerning asset freezing measures in response to the situation in the Libyan Arab Jamahiriya and Council regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya and for connected purposes.