

Subsidiary Legislation made under ss.6, 7 & 9.

Republic of Maldives (Asset-Freezing) Order 2018

LN.2018/242

Commencement **1.11.2018**

Implementing:
Regulation (EU) No 2018/1001

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In exercise of the powers conferred upon him by sections 6, 7, and 9 of the Export Control Act 2005, and all other enabling powers, for the purpose of implementing Council Regulation (EU) No 2018/1001 of 16 July 2018, the Minister has made the following Order-

**Part 1
Preliminary**

Title.

1. This Order may be cited as the Republic of Maldives (Asset-Freezing) Order 2018.

Commencement.

2. The Order shall commence on the day of publication.

Interpretation.

- 3.(1) In this Order-

“the Council Regulation” means Council Regulation (EU) 2018/1001 of 16th July 2018 concerning restrictive measures in view of the situation in the Republic of Maldives, and a reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time;

“designated person” means a person, entity or body listed in Annex I to the Council Regulation which is reproduced in Schedule 2 of this Order;

“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;

“Member State” means a Member State of the European Union;

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

“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.

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

General.

4.(1) This Order makes provision for the implementation of restrictive Measures set out in the Regulation.

(2) The persons who are subject to restrictive measures and are listed in Annex I of the Regulation are set out in Schedule 2.

(3) Where a person is no longer the subject of restrictive measures under the Regulation, the Minister shall amend the Schedule by Notice published in the Gazette.

(4) Where any of the particulars in Annex I of the Regulation are amended, whether by the inclusion of new persons or otherwise, the Minister may amend the Schedule by Notice in the Gazette.

Part 2

Funds and Economic Resources

Freezing of funds and economic resources.

5.(1) A person (“P”) must not deal with funds or economic resources 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 their 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 11 (licences).

Making funds available to a designated person.

6.(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 paragraph 10 (credits to a frozen account) and 11.

Making funds available for the benefit of a designated person.

7.(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, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible.

(3) Subparagraph (1) is subject to paragraphs 10 and 11.

Making economic resources available to a designated person.

8.(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 11.

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

9.(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, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible.

(3) Subparagraph (1) is subject to paragraph 11.

Credits to a frozen account.

10.(1) The prohibitions in paragraphs 5 and 6 are not contravened by a person who credits a frozen account with-

- (a) interest or other earnings due on the account;
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account; or
- (c) payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in Gibraltar.

(2) The prohibitions in paragraphs 5 and 6 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 (c) or subparagraph (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.

11.(1) The prohibitions in paragraphs 5 to 9 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; or
- (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 Offences

Contravention and circumvention of prohibitions

12.(1) A person who contravenes any of the prohibitions in paragraphs 5 to 9 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 5 to 9; or
- (b) to enable or facilitate the contravention of any such prohibition.

Officers of a body corporate etc.

13.(1) Where an offence under this Order is 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 commits an offence and 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; or
 - (ii) in any other case, to a member of the governing body.

Penalties.

14.(1) A person guilty of an offence under paragraph 11 or 12 is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
- (b) on summary conviction-
 - (i) to imprisonment for a term not exceeding six months;

(ii) to a fine, or to both.

(2) A person guilty of an offence under paragraph 1(5) or paragraph 4(1) of Schedule 1 is liable on summary conviction-

(a) to imprisonment for a term not exceeding six months; or

(b) to a fine, or to both.

Extra-territorial application of offences.

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

(a) a British person;

(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) 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.

Proceedings.

16.(1) Proceedings against any person for an offence under this Order may be taken before the Supreme court.

(2) An offence falling under this Order which is committed wholly or partly outside Gibraltar may for all incidental purposes be treated as having been committed within the jurisdiction of the Supreme court.

(3) An information relating to an offence that is triable by the magistrates’ court may also be tried if it is laid-

- (a) at any time within three years after the commission of the offence; and
- (b) within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

Consent to prosecution.

17.(1) Proceedings for an offence under this Order (other than a summary offence) may not 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.

**Part 4
Miscellaneous**

Information provisions.

18. Schedule 1 (information provisions) has effect.

Notices.

19.(1) This paragraph has effect in relation to any notice to be given to a person by the Minister under paragraph 11 (licences).

(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.

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20.(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 makes the Crown criminally liable.

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

SCHEDULE 1
Information provisions

Reporting obligations of relevant institutions and others.

1.(1) A relevant institution or relevant business or profession 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 11 or 12; 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 or relevant business or profession 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 or relevant business or profession 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 or relevant business or profession.

(4) The relevant institution or relevant business or profession 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 or relevant business or profession that fails to comply with any requirement of subparagraph (1), (2) or (4) commits an offence.

(6) In this paragraph, a “relevant business or profession” means-

- (a) an auditor;

- (b) a casino;
- (c) a dealer in precious metals or stones;
- (d) an estate agent;
- (e) an accountant;
- (f) an independent legal professional;
- (g) a tax adviser; and
- (h) a trust or company service provider, operating in Gibraltar.

(7) For the purposes of subparagraph (6)-

“auditor” means a person or firm registered in Part I or II, or in the case of firms, of the Register maintained under the provisions of the Auditors Approval and Registration Act, 1998.

“casino” means a gaming establishment holding a gaming operating licence under section 3 of the Gambling Act 2005 (nature of the licence);

“dealer in precious metals or stones” means a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging-

- (a) articles made from gold, silver, platinum or palladium; or
- (b) precious stones or pearls;

“estate agent” means a firm or sole practitioner, who, or whose employees, carry out estate agency work, when the work is being carried out;

“accountant” means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services;

“independent legal professional” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when providing such services;

“tax adviser” means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services;

“trust or company service provider” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services-

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act-
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as-
 - (i) a trustee of an express trust or similar legal arrangement; or
 - (ii) a nominee shareholder for a person.

(8) In subparagraph (7)-

“firm” means any entity that, whether or not a legal person, is not an individual and includes a body corporate and a partnership or other unincorporated association.

Powers to request information.

2.(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 the Minister 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 11 to provide information concerning-

(a) funds or economic resources dealt with under the licence; or

(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 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 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.

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; or
 - (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 11 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.

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 pursuant to this Order to any person for the purpose of facilitating or ensuring compliance with the Council Regulation.

(2) The power in subparagraph (1) includes but is not limited to disclosing information to the following persons-

- (a) to a police officer;
- (b) any person holding or acting in any office under or in the service of the Government of Gibraltar;
- (c) the Gibraltar Financial Services Commission;
- (d) any other regulatory body, including those of Member States;
- (e) any organ of the United Nations; or
- (f) the Council of the European Union, the European Commission or the Government of a Member State.

(3) The purpose of facilitating or ensuring compliance with the Council Regulation referred to in subparagraph (1) includes but is not limited to the following-

- (a) monitoring compliance with, or detecting evasion of, this Order or the Council Regulation;
- (b) giving assistance or co-operation, pursuant to the Council Regulation; or

(c) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in Gibraltar for an offence under this Order.

(4) The Minister may disclose any information obtained by him pursuant to this Order to any person 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.

(5) In subparagraph (4) “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 11.

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

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paragraph 3(1)

SCHEDULE 2

List of persons, entities or bodies listed in Annex I to the Council Regulation