

**2011 No. 748**

**OVERSEAS TERRITORIES**

**The Tunisia (Restrictive Measures) (Overseas Territories) Order  
2011**

*Made* - - - - - *16th March 2011*  
*Laid before Parliament* *17th March 2011*  
*Coming into force* - - - *18th March 2011*

At the Court at Buckingham Palace, the 16th day of March 2011

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b) and all of the other powers enabling her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

**Citation, commencement, extent and application**

1.—(1) This Order may be cited as the Tunisia (Restrictive Measures) (Overseas Territories) Order 2011 and shall come into force on 18th March 2011.

(2) This Order shall extend to the territories listed in Schedule 1.

(3) Article 13 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) Article 13 shall apply to the Falkland Islands and South Georgia and the South Sandwich Islands subject to the modification set out in Schedule 3.

(5) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory;

(6) An offence may be committed under articles 4(2), 5(2), 7, 10(4), 11(1) or (2), by any person in the Territory or by any person elsewhere who is—

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of any part of that Territory.

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(a) 1833 c.85.

(b) 1887 c. 54 and 1945 c.7.

## Interpretation

2.—(1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say—

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

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

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

“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 relevant 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, 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;

“frozen account” means an account with a relevant institution which is held or controlled by a listed person;

“Gazette” means the official gazette of a Territory or any other form in which official information is normally made available in that Territory;

“Governor” means the Governor or other officer administering the Government of the Territory;

“listed person” means any person listed in Annex I to the Regulation (as modified from time to time) or a person identified in a direction by the Governor under article 8(1);

“person” means any natural or legal person, entity or body;

“the Regulation” means Council Regulation (EU) No. 101/2011<sup>(a)</sup> adopted by the Council of the European Union on 4th February 2011 which came into force on 5th February 2011 (the date of its publication) and which places restrictive measures on certain persons responsible for the misappropriation of Tunisian State funds and persons associated with them as amended from time to time;

“relevant institution” means—

- (a) the person responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business; or
- (c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

“ship” includes every description of vessel used in navigation;

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;

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(a) O.J. L 31 5.2.2011, p.1.

“vehicle” means land transport vehicle.

- (2) For the purpose of the definition of “relevant institution” in paragraph (1)—
- (a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000(a); and
  - (b) a person is not regarded as accepting deposits by way of business if—
    - (i) the person does not hold themselves out as accepting deposits on a day to day basis, and
    - (ii) any deposits which they accept are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

### **Publicly available list of listed persons**

- 3.—(1) The Governor shall—
- (a) maintain a list of listed persons;
  - (b) cause the list to be published in the Gazette of the Territory as necessary from time to time.
- (2) Except where this Order provides otherwise, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.

## ***FUNDS AND ECONOMIC RESOURCES***

### **Freezing funds and economic resources**

4.—(1) A person shall not deal with funds or economic resources belonging to, or owned, held or controlled by a listed person unless they do so under the authority of a licence granted under article 9.

(2) A person who contravenes the prohibition in paragraph (1) shall be guilty of an offence under this Order.

(3) In proceedings for an offence under this article, it is a defence for a person to show that they did not know and had no reasonable cause to suspect that the funds or economic resources were owned, held or controlled by a listed person.

(4) In this article, “to deal with” means—

- (a) in respect of funds—
  - (i) to use, alter, move, allow access to or transfer;
  - (ii) to deal with in any other way that would result in any change in volume, amount location, ownership, possession, character or destination, or;
  - (iii) to make any other change that would enable use, including portfolio management; and
- (b) in respect of economic resources, to exchange or use in exchange for funds, goods or services.

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(a) 2000 c. 8

### **Making funds and economic resources available**

5.—(1) A person shall not make funds or economic resources available, directly or indirectly, to or for the benefit of a listed person unless authorised by a licence granted under article 9.

(2) A person who contravenes the prohibition in paragraph (1) shall be guilty of an offence under this Order.

(3) In proceedings for an offence under this article, it is a defence for a person to show that they did not know and had no reasonable cause to suspect funds or economic resources were being made available, directly or indirectly, to or for the benefit of a listed person.

### **Exceptions**

6.—(1) A person is not guilty of an offence under article 4 or 5 if they credit 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 prior to the date on which the account holder became a listed person.

(2) It is not an offence under article 5 for a relevant institution to credit a frozen account where it receives funds transferred by a third party to a frozen account under this Order.

(3) Article 4 applies to any funds credited to a frozen account in accordance with this article.

(4) In this article: “third party” means a person other than the account holder or the relevant institution with which the account is maintained.

### **Circumventing prohibitions etc**

7. Any person who participates knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to—

- (a) circumvent a prohibition in article 4(1) or 5(1); or
- (b) enable or facilitate the commission of an offence under article 4(2) or 5(2),

shall be guilty of an offence under this Order.

### **Governor’s powers to give directions**

8.—(1) Where the Governor has reasonable grounds for suspecting that a person is a person listed in Annex I to the Regulation, the Governor may give a direction that such person is a listed person for the purposes of this Order.

(2) The Governor may vary or revoke such a direction at any time.

(3) A direction under paragraph (1) has effect—

- (a) for such a period as the Governor may specify in the direction, or
- (b) until the direction is revoked or set aside.

(4) Where the Governor gives a direction the Governor shall—

- (a) take such steps as the Governor considers appropriate to publicise the direction;
- (b) give written notice to the person identified in the direction; and
- (c) if the direction is varied or revoked—
  - (i) give written notice of the variation or revocation to the person identified in the direction; and
  - (ii) take such further steps as the Governor considers appropriate to publicise the variation or revocation.

(5) The Supreme Court may set aside a direction on the application of—

- (a) the person identified in the direction, or

(b) any other person affected by the direction.

(6) A person who makes an application under paragraph (5) shall give a copy of the application and any witness statement or affidavit in support to the Governor not later than seven days before the date fixed for the hearing by the Supreme Court of the application.

### **Licences**

9.—(1) The Governor may grant a licence to disapply the prohibition in article 4(1) or 5(1) in relation to the acts specified in the licence.

(2) A licence may relate to—

- (a) basic expenses of a listed person and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges;
- (b) payments of reasonable professional fees and expenses associated with the provision of legal services;
- (c) payment of fees or service charges for the routine holding or maintenance of funds in a frozen account or economic resources;
- (d) payment of necessary extraordinary expenses as determined by the Governor provided that the other Member States and the Commission of the European Union have been notified of the grounds for the Governor's determination at least two weeks before the Governor's authorisation of payment;
- (e) satisfaction of a judicial, administrative or arbitral lien or judgment provided that the lien or judgment was entered into prior to 5th February 2011<sup>(a)</sup> and is not for the benefit of a listed person.

(3) A licence may be—

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

(4) The Governor may vary or revoke a licence at any time.

(5) Where a licence is granted, varied or revoked by the Governor, the Governor shall—

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

## ***DISCLOSURE BY FINANCIAL INSTITUTIONS***

### **Failure to disclose knowledge or suspicion**

10.—(1) If a relevant institution knows or suspects that a relevant person—

- (a) is a listed person, or
- (b) has committed an offence under article 4(2), 5(2), 7, 11(1) or (2),

it shall disclose to the Governor the information or other matter specified in paragraph (2) as soon as is reasonably practicable after that information or other matter comes to its attention.

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<sup>(a)</sup> This is the date on which the Regulation came into force.

(2) A relevant institution, when it makes a disclosure to the Governor under paragraph (1), must state—

- (a) the information or other matter on which the knowledge or suspicion is based;
- (b) any information it holds about the relevant person by which the person can be identified; and
- (c) where the relevant person is a listed person, the nature and amount or quantity of any funds or economic resources held by the relevant institution for that person since the person first became a listed person.

(3) A relevant institution must inform the Governor without delay if it credits a frozen account in accordance with article 6(2).

(4) A relevant institution which fails to comply with the requirement in paragraph (1), (2) or (3) is guilty of an offence under this Order.

(5) In this paragraph “relevant person” means—

- (a) a customer of the relevant institution;
  - (b) a person who has been a customer of the relevant institution at any time on or after 5th February 2011; or
  - (c) a person with whom the relevant institution has had dealings in the course of business on or after that date.
- (6) where a relevant institution discloses to the Governor—
- (a) its knowledge or suspicion that a person is a listed person or a person who has committed an offence under article 4(2), 5(2), 7, 10(4), 11(1) or (2); or
  - (b) any information or other matter on which that knowledge or suspicion is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

## ***GENERAL***

### **Offences in connection with application for licences, conditions attaching to licences, etc**

**11.**—(1) If, for the purposes of obtaining any licence under this Order, any person makes a statement or furnishes any document or information which to their knowledge is false in any material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, they shall be guilty of an offence under this Order.

(2) Subject to paragraph (3), any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with the conditions attaching to that licence shall be guilty of an offence under this Order.

(3) No person shall be guilty of an offence under paragraph (2) where they prove that the condition with which they failed to comply was modified, otherwise than with their consent, by the Governor after the doing of the act authorised by the licence.

### **Obtaining of evidence and information**

**12.**—(1) The provisions of Schedule 4 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor—

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of:
  - (i) this Order in the Territory; or
  - (ii) any law making provision with respect to the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory;

- (b) of evidence of the commission of—
  - (i) in the Territory, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or
  - (ii) with respect to any of the matters regulated by this Order, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory;
- (c) of evidence or information establishing—
  - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by a listed person; or
  - (ii) the nature of any financial transactions entered into by a listed person;
- (d) of evidence or information considered by the Governor appropriate to cooperate with any domestic or international investigation relating to the funds, economic resources or financial transactions of a listed person.

(2) No information furnished or document produced by any person in pursuance of a request made under Schedule 4 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 their capacity as a servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or the possession of that document in their own right;
- (b) to any person empowered under Schedule 4 to request that it be furnished or produced to any person holding or acting in any office under or in the service of—
  - (i) the Crown in respect of the Government of the United Kingdom;
  - (ii) the Government of the Isle of Man;
  - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;
  - (iv) the States of Jersey; or
  - (v) the Government of any other British overseas territory;
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings—
  - (i) in the Territory, for an offence under this Order or with respect to any of the matters regulated by this Order, for any offence relating to customs, or
  - (ii) for an offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas Territory;
- (d) to the Financial Services Authority of the United Kingdom or to the monetary authority of any other country or territory.

**Penalties and proceedings**

13.—(1) A person guilty of an offence under article 4(2), 5(2), 7 or paragraph 4(1)(b) or (d) of Schedule 4 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 six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) A person guilty of offence under article 11(1) or (2) is liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.



(3) A person guilty of an offence under article 10(4) or paragraph 4(1)(a) or (c) of Schedule 4 shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.

(4) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or be attributable to any neglect on the part 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, he or she, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(6) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(7) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions.

(8) Notwithstanding that the necessary consent under paragraph (7) to the institution of proceedings for the offence may not have been obtained, paragraph (7) shall not prevent—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or
- (b) the remand in custody or on bail of any person charged with such an offence.

### **Notices**

**14.**—(1) This article has effect in relation to any notice to be given to a person by the Governor under article 8(4)(b) or (c), or 9(5)(a).

(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, by posting it to the registered or principal office of the body corporate in the Territory.

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

### **Exercise of the powers of the Governor**

**15.**—(1) The Governor may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

### **Miscellaneous**

**16.**—(1) Any provision of this Order which prohibits the doing of an act except under the authority of a licence granted by the Governor shall not have effect in relation to any such act done anywhere other than the Territory provided that it is duly authorised.

(2) An act is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a



law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

*Judith Simpson*  
Clerk of the Privy Council

## SCHEDULE 1

Article 1(2)

### TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla  
British Antarctic Territory  
British Indian Ocean Territory  
Cayman Islands  
Falkland Islands  
Montserrat  
Pitcairn, Henderson, Ducie and Oeno Islands  
St Helena, Ascension Island and Tristan da Cunha  
South Georgia and the South Sandwich Islands  
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus  
Turks and Caicos Islands  
Virgin Islands

## SCHEDULE 2

Article 1(3)

### APPLICATION OF ARTICLE 13 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. Any person who commits an offence under article 4(2), 5(2), 7, 11(1) or (2), or paragraph 4(1)(b) or (d) of Schedule 4, is liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

2. Any person who commits an offence under article 10(4) or paragraph 4(1)(a) or (c) of Schedule 4, is liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine of any amount or both, and on summary conviction to a fine not exceeding £5,000 or its equivalent, or to both.

3. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, they, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.

4. Proceedings against any person for an offence may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

5. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the Attorney General and the Legal Adviser.

6. Irrespective of whether consent under paragraph 5 has been obtained, paragraph 5 does not prevent—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence;
- (b) the remand in custody or on bail of any person charged with such an offence.

### SCHEDULE 3

Article 1(4)

#### APPLICATION OF ARTICLE 13 TO THE FALKLAND ISLANDS AND TO SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

When the Magistrate's Court is sentencing a person following a summary conviction for an offence under this Order, alternatively to the penalties applicable under article 13 to the relevant offence upon summary conviction, there shall be available to the Magistrate's Court any penalties which would be applicable under article 13 upon conviction for that offence on indictment.

### SCHEDULE 4

Article 12

#### EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or to any provision of any other law, the Governor may request any person in or resident in the Territory to furnish any information in their possession or control, or to produce any document in their possession or control, which the Governor may require for the purposes of article 12 of this Order; and any person to whom such a request is made shall comply with it within such time and in such a manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in their possession in that capacity.

(3) Where a person is convicted of an offence under paragraph 4 of this Schedule of failing to furnish or produce a document when requested to do so, the court may make an order requiring them, within such a period as may be specified in the order, to furnish the information or provide the document.

(4) 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 them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by law.

2.—(1) If any judge, justice of the peace or magistrate is satisfied by the information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case:

- (a) that there is a reasonable ground for suspecting that an offence under this Order, or with respect to any matters regulated by this Order, an offence relating to customs, has been or

is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified, or

- (b) that any documents which ought to have been produced under paragraph (1) and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he or she may grant a search warrant authorising any police officer or constable, together with any persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft by virtue of the warrant issued in accordance with sub-paragraph (1) may do all or any of the following things:

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which they have reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which they have reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which they have reasonable grounds to believe are to be produced in accordance with paragraph 1; or
- (d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may:

- (a) search any person who, they have reasonable grounds to believe may be in the act of committing an offence referred to this paragraph; and
- (b) seize anything they find in a search referred to in paragraph (a), if they have reasonable grounds for believing that it is evidence of an offence referred to in this paragraph,

provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where by virtue of this paragraph a person is authorised to enter any premises, vehicle, ship or aircraft they may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of their authority before exercising that power.

4.—(1) Any person 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 by any person who is empowered to make it; or
- (b) furnishes any information or produces any document which to their knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or

- (c) otherwise wilfully obstructs any person in the exercise of their powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

5. Nothing in this paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to give or produce any privileged information or document in his possession in that capacity.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order applies to each of the British overseas territories listed in Schedule 1. It places restrictive measures on certain persons, entities and bodies responsible for the misappropriation of Tunisian State funds, and persons associated with them who are thereby depriving the Tunisian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country.

The Order gives effect in the overseas territories listed in Schedule 1 to measures adopted by the European Union in Council Decision 2011/72/CFSP 31st January 2011 and implemented in Council Regulation (EU) No. 101/2011 adopted 4th February 2011 which came into force on 5th February 2011, the date of its publication.

Article 1 provides that the Order extends to the territories listed in Schedule 1.

Article 2 contains definitions used in the Order.

Article 3 provides for publication by the Governor of a list of listed persons.

Article 4 requires the assets of a listed person to be frozen.

Article 5 prohibits making funds available to a listed person and also provides for a defence.

Article 6 provides exceptions to the articles 4 and 5.

Article 7 creates offences for circumventing the prohibitions in articles 4 and 5.

Article 8 enables the Governor to direct that a person reasonably suspected to be a listed person be treated as if he were, for example when using an alias.

Article 9 makes provision for licences to authorise exemptions from articles 4 and 5.

Article 10 requires institutions to disclose knowledge or suspicion of customers or other persons with whom they have dealings being listed persons, and creates offences for failure to comply with the requirements.

Article 11 creates offences in connection with applications for licences and the failure to comply with the conditions attaching to a licence.

Article 12 provides for the Governor to obtain evidence or information to secure compliance with, or detect evasion of, the matters regulated by the Order.

Article 13 provides for penalties and proceeding for offences created under the Order.

Article 14 prescribes the manner in which notice may be given under the Order.

Article 15 provides for the delegation of powers by the Governor and stipulates the form and nature of licences granted under the Order.

Article 16 limits the scope of the prohibitions contained in the Order.

Schedule 1 lists the territories to which the Order applies.

Schedule 2 reflects court structures in the Sovereign Base Areas.

Schedule 3 contains a modification of article 13 regarding the application of penalties for the Falkland Islands and South Georgia and the South Sandwich Islands.

Schedule 4 provides for the Governor to obtain evidence or information to secure compliance with, or detect evasion of, the matters regulated by the Order.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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**2011 No. 748**

**OVERSEAS TERRITORIES**

The Tunisia (Restrictive Measures) (Overseas Territories) Order  
2011

£5.75