



Jersey

COMMUNITY PROVISIONS (RESTRICTIVE MEASURES – GUINEA) (JERSEY) ORDER 2010¹

Official Consolidated Version

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 1 January 2019 to 20 March 2019



Jersey

COMMUNITY PROVISIONS (RESTRICTIVE MEASURES – GUINEA) (JERSEY) ORDER 2010

Contents

Article

PART 1	4
INTERPRETATION	4
1 Interpretation	4
PART 2	5
PART 3	5
FUNDS AND ECONOMIC RESOURCES RELATED TO NATIONAL COUNCIL FOR DEMOCRACY AND DEVELOPMENT	5
6 Freezing of funds and economic resources	5
7 Authorization of release of frozen funds or resources for certain purposes.....	6
8 Authorization of release of frozen funds or resources subject to prior lien or judgment	6
9 Exception to Article 6 for certain credits to frozen accounts.....	6
10 Limitation of liability for persons complying with this Part	7
PART 4	7
INFORMATION	7
11 Duty to supply information	7
12 Information.....	7
13 Use and provision of information by Minister	7
PART 5	8
OFFENCES AND MISCELLANEOUS	8
14 Offences.....	8
15 Delegation.....	9
16 Application.....	9
17 Citation	9

SCHEDULE 1	10
SCHEDULE 2	11
INFORMATION	11
1 Disclosure of information	11
2 Restrictions on disclosure.....	11
ENDNOTES	13
Table of Legislation History.....	13
Table of Endnote References	13



Jersey

COMMUNITY PROVISIONS (RESTRICTIVE MEASURES – GUINEA) (JERSEY) ORDER 2010

THE CHIEF MINISTER, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996 and having regard to Council Regulation (EU) No. 1284/2009 of 22 December 2009 imposing certain specific restrictive measures in respect of the Republic of Guinea, as amended to 2 April 2010, orders as follows –²

Commencement [[see endnotes](#)]

PART 1

INTERPRETATION

1 Interpretation³

In this Order, unless the context otherwise requires –

“Council Regulation” means Council Regulation (EU) No. 1284/2009 of 22 December 2009 imposing certain specific restrictive measures in respect of the Republic of Guinea (OJ No. L 346/26, 23.12.2009) as amended⁴ up to 16th April 2014;

“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;

“freeze” –

- (a) in relation to economic resources, means prevent their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them; and
- (b) in relation to funds, means prevent any move, transfer, alteration, use of, access to, or dealing with the funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;

“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;

“listed person” has the meaning assigned by Article 6.

PART 2⁵

PART 3

FUNDS AND ECONOMIC RESOURCES RELATED TO NATIONAL COUNCIL FOR DEMOCRACY AND DEVELOPMENT

6 Freezing of funds and economic resources

- (1) In this Part “listed person” means a natural or legal person, entity or body listed in Annex II to the Council Regulation.⁶
- (2) All funds and economic resources belonging to, owned, held or controlled by listed persons shall be frozen.
- (3) No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of listed persons.
- (4) It is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs (2) and (3).
- (5) Paragraph (3) does not give rise to liability of any kind on the part of any natural or legal persons, entities or bodies who make funds or economic resources available, if at the time of doing so they do not know, and have no reasonable cause to suspect, that their actions contravene that paragraph.

7 Authorization of release of frozen funds or resources for certain purposes

By way of derogation from Article 6, the Minister may authorize the release of particular frozen funds or economic resources or the making available of particular funds or economic resources, under such conditions as the Minister deems appropriate, if the Minister determines that the funds or economic resources concerned are –

- (a) necessary to satisfy the basic needs of a listed person, and any dependent family members of that person, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; or
- (d) necessary for extraordinary expenses.

8 Authorization of release of frozen funds or resources subject to prior lien or judgment

By way of derogation from Article 6, the Minister may authorize the release of particular frozen funds or economic resources, if the following conditions are met –

- (a) the funds or economic resources are the subject of –
 - (i) a judicial, administrative or arbitral lien established before the date on which the natural or legal person, entity or body concerned became a listed person, or
 - (ii) a judicial, administrative or arbitral judgment rendered before that date;
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognized as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the lien or judgment is not for the benefit of a listed person; and
- (d) it is not contrary to public policy in Jersey to recognize the lien or judgment.

9 Exception to Article 6 for certain credits to frozen accounts

- (1) Article 6(3) does not prevent –
 - (a) a financial or credit institution in Jersey from crediting a frozen account where it receives funds transferred by a third party to the account of a listed person; or
 - (b) the addition to a frozen account of –
 - (i) interest or other earnings on that account, or
 - (ii) a payment due under a contract, agreement or obligation that was concluded or arose before the natural or legal person, entity or body concerned became a listed person.
- (2) A financial or credit institution shall without delay inform the Minister if it credits a frozen account under paragraph (1)(a).

- (3) For the avoidance of doubt, when anything is added or credited under this Article to a frozen account, it becomes part of that account for the purpose of Article 6(2) and accordingly it shall then be frozen under that Article.

10 Limitation of liability for persons complying with this Part

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Part, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

PART 4

INFORMATION

11 Duty to supply information

Without prejudice to any provision of the law of Jersey concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies resident or located in Jersey shall –

- (a) supply immediately to the Minister any information which would facilitate compliance with this Order, such as information about accounts and amounts frozen in accordance with Article 6; and
- (b) co-operate with the Minister in any verification of such information.

12 Information⁷

Schedule 2 has effect in order to facilitate the obtaining, by or on behalf of the Minister, of information for any purpose in connection with the Council Regulation.

13 Use and provision of information by Minister

- (1) The Minister shall use information supplied or provided under this Order only for the purposes described in this Order.
- (2) The Minister may inform the European Commission of the measures taken under this Order.
- (3) The Minister may supply the European Commission with any other relevant information at his or her disposal in connection with this Order, in particular information in respect of violation and enforcement problems and judgments handed down by any court in Jersey.
- (4) The Minister may –
 - (a) inform the European Commission or a competent authority of an authorization granted, or proposed to be granted, under Article 7 or 8;
 - (b) for the purpose of assisting the European Commission or a competent authority to ensure compliance with the Council Regulation, supply to the

European Commission or authority information supplied or provided under Article 9(2), 11 or 12.

- (5) In paragraph (4) “competent authority” means an authority of a Member State, for which a website is listed in Annex III to the Council Regulation.⁸

PART 5

OFFENCES AND MISCELLANEOUS

14 Offences

- (1) A person is guilty of an offence, and liable to imprisonment for a term of 2 years and to a fine, if that person –
- (a) contravenes any of Articles 6(2), (3) or (4), 9(2) or 11;
 - (b) intentionally provides false information, a false document or a false explanation under Article 11 or to any person exercising powers under Schedule 2; or
 - (c) with intent to evade Article 11 or Schedule 2, destroys, mutilates, defaces, secretes or removes any document.⁹
- (2) A person is guilty of an offence, and liable to imprisonment for a term of 3 months and to a fine, if that person contravenes paragraph 1(2) of Schedule 2.¹⁰
- (3) If an offence under this Order committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) a person purporting to act in any such capacity,
- the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.¹¹
- (4) If the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.
- (5) A prosecution for an offence under this Order shall not be instituted without the consent of the Attorney General.
- (6) In relation to an offence against paragraph (1) or (2) –
- (a) Article 48 of the [Customs and Excise \(Jersey\) Law 1999](#) applies to the arrest of a person for the offence as it applies to the arrest of a person for an offence under that Law; and
 - (b) Articles 64 to 67 of that Law apply to the offence, and to penalties and proceedings for the offence, as those Articles apply in relation to offences, penalties, and proceedings for offences, under that Law.

15 Delegation

The Minister may, to such extent and subject to such restrictions and conditions as he or she may think proper, delegate or authorize the delegation of any of his or her functions under this Order to any person, or class or description of person, approved by the Minister.

16 Application

This Order applies –

- (a) to Jersey, including the territorial sea adjacent to Jersey and Jersey's airspace;
- (b) on board any aircraft or vessel under the jurisdiction of Jersey;
- (c) to any legal person, entity or body incorporated or constituted under the law of Jersey; and
- (d) to any legal person, entity or body in respect of any business done, in whole or in part, in Jersey.

17 Citation

This Order may be cited as the Community Provisions (Restrictive Measures – Guinea) (Jersey) Order 2010.

SCHEDULE 1¹²

SCHEDULE 2¹³

(Article 12)

INFORMATION**1 Disclosure of information**

- (1) The Minister (or any person authorized by the Minister for that purpose either generally or in a particular case) may request a person in or resident in Jersey to –
 - (a) furnish to the Minister information; or
 - (b) produce to the Minister a document,in the person's possession or control, that the Minister may require for the purpose of ensuring compliance with the Council Regulation.
- (2) A person shall, within the time and manner specified in the request (or, if no time has been so specified, within a reasonable time), comply with a request made pursuant to sub-paragraph (1) unless the person has a reasonable excuse not to do so.
- (3) Nothing in this paragraph requires a person who has acted as legal adviser for a person to disclose a privileged communication made to the person in that capacity.
- (4) If a person is convicted by a court of an offence under this Order of failing to furnish information or to produce a document, the court may make an order requiring the person, within such period as may be specified in the order, to furnish the information or produce the document.
- (5) The power conferred by this paragraph to request a person to produce a document includes the power to take copies of or extracts from a document so produced and to request the person or, if the 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 any such document.

2 Restrictions on disclosure

- (1) Information furnished or a document produced (including any copy or extract made of a document produced) by a person in pursuance of a request made under this Schedule must not be disclosed except –
 - (a) subject to sub-paragraph (2), with the consent of the person by whom the information was furnished or the document was produced;
 - (b) to a person who would have been empowered under this Schedule to request that it be furnished or produced or a person holding or acting in an office under or in the service of the States;
 - (c) on the authority of the Minister, to the European Commission or to any of the competent authorities of the Member States, being the competent

authorities listed in the Council Regulation, for any purpose in connection with that Council Regulation;

- (d) on the authority of the Minister, to the Jersey Financial Services Commission, for the purpose of any of its functions, where the Minister believes that the exercise of such a function may assist in achieving compliance with the Council Regulation; or
 - (e) with a view to the institution of, or otherwise for the purposes of, proceedings for an offence under this Order.
- (2) A person who has obtained information or is in possession of a document only in the person's capacity as a servant or agent of another person may not give consent for the purposes of sub-paragraph (1)(a) but such consent may instead be given by a person who is entitled to that information or to possession of that document in the person's own right.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Community Provisions (Restrictive Measures – Guinea) (Jersey) Order 2010	R&O.70/2010	13 July 2010
Community Provisions (Restrictive Measures – Guinea) (Amendment) (Jersey) Order 2011	R&O.35/2011	25 March 2011
Community Provisions (Restrictive Measures – Guinea) (Amendment No. 2) (Jersey) Order 2013	R&O.18/2013	2 February 2013
Community Provisions (Restrictive Measures – Guinea) (Amendment No. 3) (Jersey) Order 2014	R&O.41/2014	25 April 2014

Table of Endnote References

- ¹ This Order was repealed by the EU Legislation (Sanctions – Guinea) (Jersey) Order 2019 on 21 March 2019
- ² On the repeal of the European Communities Legislation (Implementation) (Jersey) Law 1996, this Order was continued in force and treated as if made under Article 2(1) of the European Union Legislation (Implementation) (Jersey) Law 2014 (see Article 6 of that Law).
- ³ Article 1 amended by R&O.35/2011, R&O.18/2013, R&O.41/2014
- ⁴ Available, with subsequent amendments, on EUR-Lex at <http://eur-lex.europa.eu/> - searchable by Regulation number and year, or by Official Journal publication details.
- ⁵ Part 2 revoked by R&O.41/2014
- ⁶ Article 6(1) amended by R&O.35/2011
- ⁷ Article 12 substituted by R&O.18/2013
- ⁸ Article 13(5) amended by R&O.18/2013
- ⁹ Article 14(1) amended by R&O.18/2013, R&O.41/2014
- ¹⁰ Article 14(2) substituted by R&O.18/2013
- ¹¹ Article 14(3) amended by R&O.41/2014
- ¹² Schedule 1 deleted by R&O.41/2014
- ¹³ Schedule 2 added by R&O.18/2013