

CAYMAN ISLANDS



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STATUTORY INSTRUMENTS

2011 No. 2717

**THE LIBYA (RESTRICTIVE MEASURES) (OVERSEAS
TERRITORIES) (AMENDMENT) ORDER 2011**

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2011 No. 2717

OVERSEAS TERRITORIES

**The Libya (Restrictive Measures) (Overseas Territories) (Amendment)
Order 2011**

<i>Made</i>	<i>16th November 2011</i>
<i>Laid before Parliament</i>	<i>17th November 2011</i>
<i>Coming into force</i>	<i>18th November 2011</i>

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

Present,

The Queen's Most Excellent Majesty in Council

Under article 41 of the Charter of the United Nations, the Security Council of the United Nations has, by resolution 2009 (2011)(1) adopted on 16th September 2011, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to Libya.

Her Majesty, by virtue and in exercise of the powers vested in Her by section 1 of the United Nations Act 1946(2) and section 112 of the Saint Helena Act 1833(3), the British Settlements Acts 1887 and 1945(4) and of all 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 Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2011 and shall come into force on 18th November 2011.

(2) In this Order, "the principal Order" means the Libya (Restrictive Measures) (Overseas Territories) Order 2011(5).

(3) This Order shall extend to the territories listed in Schedule 1 of the principal Order, except paragraphs (14) and (15) of article 2 of this Order which shall extend to the territories listed in Schedule 2 of the principal Order.

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

Amendments to the principal Order

2. The principal Order is amended as follows -

(1) In article 2(1) -

(a) by amending the definition of “Council Regulations” by inserting the following words after the words “adopted by the Council of the European Union on 25th March 2011” -

“, Council Implementing Regulation (EU) No 360/2011 adopted by the Council of the European Union on 12th April 2011(6), Council Implementing Regulation (EU) No 502/2011 adopted by the Council of the European Union on 23rd May 2011(7), Council Regulation (EU) No 572/2011 adopted by the Council of the European Union on 16th June 2011(8), Council Implementing Regulation (EU) No 573/2011 adopted by the Council of the European Union on 16th June 2011(9), Council Implementing Regulation (EU) No 804/2011 adopted by the Council of the European Union on 10th August 2011(10), Council Implementing Regulation (EU) No 872/2011 adopted by the Council of the European Union on 1st September 2011(11), Council Implementing Regulation (EU) No 925/2011 adopted by the Council of the European Union on 15th September 2011(12), Council Implementing Regulation (EU) No 941/2011 adopted by the Council of the European Union on 22nd September 2011(13) and Council Regulation (EU) No 965/2011 adopted by the Council of the European Union on 28th September 2011(14);”

(b) by deleting the definition of “designated person” and replacing it with the following definition -

“ “designated person” means any person listed in Annex II of Security Council resolution 1970 (2011)(15) or listed in Annex II of Security Council resolution 1973 (2011)(16) or designated under either of these resolutions, excluding the Libyan National Oil Corporation and Zueitina Oil Company and excluding the

persons referred to in paragraph 15 of Security Council resolution 2009 (2011)(17);”

- (c) by inserting the following definition between the definition of “EU listed person” and “export” -

“ “EU restricted goods” means the equipment listed in Annex I of Council Regulation (EU) No. 204/2011(18);”

- (d) by inserting the following definition between the definitions of “person” and “procurement” -

“ “person referred to in paragraph 15 of Security Council resolution 2009 (2011)” means any of the Central Bank of Libya, the Libyan Arab Foreign Bank, the Libyan Investment Authority and the Libyan Africa Investment Portfolio;”

- (e) by inserting the following definition between the definitions of “procurement” and “relevant institution” -

“ “purposes referred to in paragraph 16 of Security Council resolution 2009 (2011)” means -

- (a) for humanitarian needs;
- (b) for fuel, electricity and water, for strictly civilian uses;
- (c) for resuming Libyan production and sale of hydrocarbons;
- (d) for establishing, operating or strengthening institutions of civilian government and civilian public infrastructure; or
- (e) facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya;”

- (f) by deleting the definition of “relevant institution” and replacing it with the following definition -

“ “relevant institution” means -

- (a) the person responsible for the regulation and supervision of financial services business in the Territory;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business;
- (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;”

- (g) by deleting the definition of “restricted goods” and replacing it with the following definition -

“ “restricted goods” means the goods, software and technology specified in Schedule 2 to the Export Control Order 2008(19) and, in so far as they are not covered in that Schedule, the goods, software and technology specified in the Common Military List of the European Union(20);”.

- (2) In the heading to article 3 by inserting the words “, persons referred to in paragraph 15 of Security Council resolution 2009 (2011)” between the words “designated persons” and the words “and restricted goods”.

- (3) In article 3(a) by inserting the words “and persons referred to in paragraph 15 of Security Council resolution 2009 (2011)” after the words “designated persons”.

- (4) In article 9(1) by deleting sub-paragraph (c) and inserting the following sub-paragraphs (c), (d) and (e) after sub-paragraph (b) -

“(c) the supply, sale or transfer to Libya of arms and related materiel of all types, including technical assistance, training, financial and other assistance, intended solely for security or disarmament assistance to the Libyan authorities, as notified to the Sanctions Committee in advance and in the absence of a negative decision by the Sanctions Committee within five working days of such notification;

(d) the supply, sale or transfer to Libya of small arms, light weapons and related materiel, temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, as notified to the Sanctions Committee in advance and in the absence of a negative decision by the Sanctions Committee within 5 working days of such a notification;

(e) other sale or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Sanctions Committee.”

- (5) In article 10 by deleting paragraph (1) and replacing it with the following paragraph (1) -

“ (1) Subject to article 12, unless they do so under the authority of a licence granted under article 15, a person (including a designated person or person referred to in paragraph 15 of Security Council

resolution 2009 (2011)) shall not deal with funds or economic resources which -

- (a) are owned, held or controlled, directly or indirectly, by a designated person or persons acting on their behalf or at their direction or by persons owned or controlled by them; or
- (b) on 16th September 2011 -
 - (i) were owned, held or controlled, directly or indirectly, by a person referred to in paragraph 15 of Security Council resolution 2009 (2011);
 - (ii) were located outside Libya; and
 - (iii) were frozen under the asset freeze imposed under paragraph 22 of Security Council resolution 1973 (2011) read with paragraph 17 of Security Council resolution 1970 (2011).”

(6) In article 14(1) by inserting the words “or a person referred to in paragraph 15 of Security Council resolution 2009 (2011)” -

- (a) between the words “for suspecting that a person is a designated person” and the words “, the Governor”; and
- (b) between the words “is to be treated as a designated person” and the words “for the purposes of this Order”.

(7) In article 15(2) -

- (a) in sub-paragraph (a) by inserting the words “or of persons referred to in paragraph 15 of Security Council resolution 2009 (2011) under the conditions specified in article 10(1)(b) of this Order” between the words “family members,” and the words “including payments”;
- (b) in sub-paragraph (f) by inserting the words “or by a person referred to in paragraph 15 of Security Council resolution 2009 (2011) under the conditions specified in article 10(1)(b) of this Order” between the words “payment by a designated person” and the words “of sums due, and by changing the full stop at the end of sub-paragraph (f) to a semi-colon”; and
- (c) by inserting the following sub-paragraph (g) -
 - “(g) access to funds or economic resources of a person referred to in paragraph 15 of Security Council resolution 2009 (2011) provided that -
 - (i) access is for one or more of the purposes referred to in paragraph 16 of Security Council resolution 2009 (2011) as determined by the Governor;

- (ii) the Sanctions Committee has been notified of the intention to authorise the unfreezing of funds or economic resources and no objection has been made by the Sanctions Committee within 5 working days of such notification;
- (iii) the funds or economic resources are not made available to, or for the benefit, of any designated person;
- (iv) the Libyan authorities have been consulted in advance about the use of such funds or economic resources; and
- (v) the notification submitted to the Sanctions Committee under paragraph (ii) has been shared with the Libyan authorities and they have not objected within 5 working days to the release of such funds or economic resources.”

(8) In article 23(1) -

- (a) in sub-paragraph (c) by inserting the words “or by a person referred to in paragraph 15 of Security Council resolution 2009 (2011) under the conditions specified in article 10(1)(b) of this Order”:
 - (i) in paragraph (i) between the words “by a designated person” and the word “; or”; and
 - (ii) in paragraph (ii) after the words “by a designated person” and before the semi-colon;
- (b) in sub-paragraph (d) by inserting the words “or of a person referred to in paragraph 15 of Security Council resolution 2009 (2011) under the conditions specified in article 10(1)(b) of this Order” after the words “of a designated person” and before the full stop.

(9) In article 24(3)(a) by deleting the words “of any amount”.

(10) In article 25 by deleting paragraph (6) and replacing it with the following -

“ (6) No proceedings shall be instituted in the Territory by the Libyan authorities, or by any person or body in Libya, or by any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolutions 1970 (2011), 1973 (2011) and 2009 (2011).”

(11) In article 26(1) by inserting the words “9(4)(a),” between the words “under articles” and the words “14(4)(b)”, and inserting the words “, 14(4)(c)(i)” after the words “14(4)(b)”.

(12) In article 28(1) by deleting the words “Security Council resolutions 1970 (2011) and 1973 (2011)” and replacing them with the words “Security Council resolutions 1970 (2011), 1973 (2011) and 2009 (2011)”.

(13) In article 30 -

- (a) in paragraph (1)(a) by inserting the words “or a person referred to in paragraph 15 of Security Council resolution 2009 (2011)” between the words “is a designated person” and the word “, or”;
- (b) in paragraph (2)(c) by inserting the words “or a person referred to in paragraph 15 of Security Council resolution 2009 (2011)” -
 - (i) between the words “is a designated person” and the words “, the nature”; and
 - (ii) after the words “became a designated person”;
- (c) in paragraph (6)(a) by inserting the words “or a person referred to in paragraph 15 of Security Council resolution 2009 (2011)” between the words “is a designated person” and the words “or a person who has committed”.

(14) In article 32 by deleting paragraph (1) and replacing it with the following paragraph -

“ (1) Part 1 of this Order with article 15 as modified by paragraph (2) below and with the exception of article 28 shall apply to the territories listed in Schedule 2 to this Order, save that references to “designated persons” shall be to “EU listed persons”, references to “restricted goods” shall be to “EU restricted goods” and references to 26th February 2011 in articles 15(2)(e) and 30(5)(b) shall be to 3rd March 2011.”

(15) In article 32 by deleting paragraph (2) and replacing it with the following paragraph (2) -

“ (2) In article 15(2) the following sub-paragraph (h) should be inserted after sub-paragraph (g)(21) -

- (h) payment necessary for humanitarian purposes, such as the delivery and facilitation of delivery of humanitarian aid, the delivery of materials and supplies necessary for essential civilian needs, including food and agricultural materials for its

production, medical products and the provision of electricity, or for evacuations from Libya.”

(16) In Schedule 3 by deleting paragraph 9 and replacing it with the following paragraph 9:

“9. No proceedings shall be instituted in the Territory by the Libyan authorities, or by any person or body in Libya, or by any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolutions 1970 (2011), 1973 (2011) and 2009 (2011).”

(17) In paragraph 1(3) of Schedule 6 by deleting the words “4(1)(b)” and replacing them with the words “4(1)(a)”.

Judith Simpson

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

The Order amends the Libya (Restrictive Measures) (Overseas Territories) Order 2011 to give effect to resolution 2009 (2011) adopted by the Security Council of the United Nations on 16th September 2011 and Council Regulation (EU) No 965/2011 adopted by the Council of the European Union on 28th September 2011. It also gives effect to a change to the humanitarian purposes exemption to the EU autonomous asset freeze, which was introduced by Council Regulation (EU) No. 572/2011 adopted by the Council of the European Union on 16th June 2011, amending Council Regulation (EU) No 204/2011. The Order also makes minor corrections to the principal Order.

The substantive provisions include the following:

Article 2(1)(b) removes from the definition of “designated person”, and therefore from the scope of the asset freeze imposed on designated persons, the Libyan National Oil Corporation, Zueitina Oil Company, the Central Bank of Libya, the Libyan Arab Foreign Bank, the Libyan Investment Authority and the Libyan Africa Investment Portfolio.

Article 2(4) adds two new exemptions to the arms embargo.

Article 2(5) imposes a freeze on the assets and economic resources of the Central Bank of Libya, the Libyan Arab Foreign Bank, the Libyan Investment Authority and the Libyan Africa Investment Portfolio that are outside Libya and were subject to the asset freeze under the principal Order on 16th September 2011 (“the partial asset freeze”).

Article 2(7)(c) provides for a new exemption to the partial asset freeze.

Article 2(15) extends the scope of the humanitarian exemption to the EU asset freeze referred to in Part 2 of the principal Order.

- (1) S/RES/2009 (2011).
- (2) 1946 c.45.
- (3) 1833 c.85.
- (4) 1887 c.54 and 1945 c.7.
- (5) S.I. 2011/1080.
- (6) O.J.L. 100 14.4.2011, p.12.
- (7) O.J.L. 136 24.5.2011, p.24.
- (8) O.J.L. 159 17.6.2011, p.2.
- (9) O.J.L. 159 17.6.2011, p.5.
- (10) O.J.L. 206 11.8.2011, p.19.
- (11) O.J.L. 227 2.9.2011, p.3.
- (12) O.J.L. 241 17.9.2011, p.1.
- (13) O.J.L. 246 23.9.2011, p.11.
- (14) O.J.L. 253 29.9.2011, p.8.
- (15) S/RES/1970 (2011).
- (16) S/RES/1973 (2011).
- (17) S/RES/2009 (2011).
- (18) O.J.L. 58 3.3.2011, p.1.
- (19) S.I. 2008/3231.
- (20) O.J. C.86 18.3.2011, p.1.
- (21) Sub-paragraph (g) is inserted by paragraph (7) above.