

LEGISLATIVE COUNCIL BRIEF

United Nations Sanctions Ordinance (Chapter 537)

UNITED NATIONS SANCTIONS (SOMALIA) (AMENDMENT) REGULATION 2016

INTRODUCTION

A At the meeting of the Executive Council on 26 January 2016, the Council advised and the Chief Executive (“the CE”) ordered that the United Nations Sanctions (Somalia) (Amendment) Regulation 2016 (“the Amendment Regulation”), at Annex A, should be made under section 3 of the United Nations Sanctions Ordinance, Cap 537 (“the Ordinance”). The Amendment Regulation was gazetted on 29 January 2016 and came into operation on the same day.

BACKGROUND

Obligation and Authority

B 2. Under section 3(1) of the Ordinance, the Chief Executive is required to make regulations to give effect to an instruction from the Ministry of Foreign Affairs of the People’s Republic of China (“MFA”) to implement sanctions decided by the Security Council of the United Nations (“UNSC”). In December 2015, the CE received an instruction from the MFA to implement UNSC Resolution (“UNSCR”) 2244 (at Annex B) in respect of Somalia. The Amendment Regulation was made pursuant to the instruction. A document issued by the Chief Secretary for Administration confirming the MFA’s instruction is at Annex C.

Sanctions against Somalia

C 3. Having regard to the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country, the UNSC passed a number of resolutions since 1992 to implement a range of sanctions against Somalia. The current framework for the sanctions was set out in

UNSCR 733 adopted in January 1992, UNSCR 1844 adopted in November 2008 and UNSCR 2036 adopted in February 2012. They concern general arms embargo¹, travel ban², financial restriction³, arms embargo⁴ in respect of persons or entities designated by the Committee established under paragraph 11 of UNSCR 751 (“the Committee”), and charcoal ban⁵.

4. Pursuant to the instructions of the MFA, the HKSAR implemented the sanctions against Somalia in relevant UNSCRs through the United Nations Sanctions (Somalia) Regulation (Cap. 537 sub. leg. AN) (“the existing Regulation”).

UNSCR 2244

5. Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region, the UNSC adopted UNSCR 2244 on 23 October 2015. The UNSC, inter alia, decided that –

- (a) the provisions set out in paragraph 2 of UNSCR 2142⁶ be renewed until 15 November 2016 (**paragraph 2 of UNSCR 2244 refers**);

¹ Paragraph 5 of UNSCR 733 imposes a general and complete embargo on all deliveries of weapons and military equipment to Somalia. Exceptions to the measures are set out in paragraphs 7, 10 and 11 of resolution 2111 and paragraph 2 of UNSCR 2142.

² Paragraph 1 of UNSCR 1844 provides for the prohibition against the entry into or transit through the territory of Member States by individuals designated by the Committee. Exceptions to the measure are set out in paragraph 2 of UNSCR 1844.

³ Paragraph 3 of UNSCR 1844 provides for the freezing of funds, other financial assets and economic resources owned or controlled, directly or indirectly, by individuals or entities designated by the Committee, or by the individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and the prohibition against making available any funds, financial assets or economic resources to or for the benefit of such individuals or entities. Exceptions to the measure are set out in paragraph 4 of UNSCR 1844 and paragraph 41 of 2182.

⁴ Paragraph 7 of UNSCR 1844 provides for the prohibition against the direct or indirect supply, sale or transfer of weapons and military equipment to individuals or entities designated by the Committee, as well as the direct or indirect supply of technical assistance or training, financial and other assistance related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment.

⁵ Paragraph 22 of UNSCR 2036 provides for the prohibition against the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia.

⁶ Paragraph 2 of UNSCR 2142 decides that until 25 October 2014 the arms embargo on Somalia shall not apply to deliveries of weapons, ammunition or military equipment or the provision of advice, assistance or training, intended solely for the development of the Security Forces of the Federal Government of Somalia, to provide security for the Somali people, except in relation to deliveries of the items set out in the annex of UNSCR 2111.

- (b) the entry into Somalia ports for temporary visits of vessels carrying arms and related materiel for defensive purposes does not amount to a delivery of such items in violation of the arms embargo on Somalia, provided that such items remain at all times aboard such vessels (**paragraph 3 of UNSCR 2244 refers**); and
- (c) until 15 November 2016 and without prejudice to humanitarian assistance programmes conducted elsewhere, the measures imposed by paragraph 3 of UNSCR 1844⁷ shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners including bilaterally or multilaterally funded NGOs participating in the United Nations Humanitarian Response Plan for Somalia (**paragraph 23 of UNSCR 2244 refers**).

THE AMENDMENT REGULATION

6. The Amendment Regulation, at Annex A, seeks to implement the exceptions to sanctions against Somalia as per UNSCR 2244. The main provisions of the Amendment Regulation include –

- (a) **section 2 which amends section 8(2) of the existing Regulation** to reflect the exceptions to the arms embargo measures against Somalia as per paragraphs 2 and 3 of UNSCR 2244;
- (b) **section 3 which amends section 9(2) of the existing Regulation** to reflect the exception to the prohibition against the provision of advice, assistance and training in respect of Somalia as per paragraph 2 of UNSCR 2244;
- (c) **section 4 which amends section 10(2) to the existing Regulation** to reflect

⁷ Paragraph 3 of UNSCR 1844 decides that all Member States shall freeze without delay the funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee pursuant to paragraph 8 below, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and decides further that all Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of such individuals or entities.

the exception to the financial sanctions against Somalia as per paragraph 23 of UNSCR 2244; and

- (d) **section 5 which amends section 32 of the existing Regulation** to specify that the exceptions to the arms embargo measures and the prohibition against the provision of advice, assistance and training in respect of Somalia as per paragraph 2 of UNSCR 2244 as well as the exception to the financial sanctions against Somalia as per paragraph 23 of UNSCR 2244 expire at midnight on 15 November 2016.

D A marked-up version showing amendments to the existing Regulation is at Annex D for easy reference by Members.

IMPLICATIONS OF THE PROPOSAL

7. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance. It has no financial, civil service, economic, productivity, environmental, sustainability, family or gender implications. Additional work arising from the enforcement of the existing Regulation as amended by the Amendment Regulation, if any, will be absorbed by the relevant departments with existing resources.

PUBLICITY

8. A press release was issued on 29 January 2016 when the Amendment Regulation was published in the Gazette.

INFORMATION ON SOMALIA AND RELATION WITH HKSAR

E 9. For information on Somalia, the background of the sanction regime against the country as well as its bilateral trade relation with the HKSAR, please refer to Annex E.

ADVICE SOUGHT

10. Members are invited to note the implementation of UNSCR 2244 in the HKSAR by the Amendment Regulation.

Commerce and Economic Development Bureau
January 2016

United Nations Sanctions (Somalia) (Amendment) Regulation 2016

L.N. 24 of 2016
B449

Section 1

L.N. 24 of 2016

**United Nations Sanctions (Somalia) (Amendment)
Regulation 2016**

(Made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council)

1. **United Nations Sanctions (Somalia) Regulation amended**
The United Nations Sanctions (Somalia) Regulation (Cap. 537 sub. leg. AN) is amended as set out in sections 2 to 5.
2. **Section 8 amended (licence for supply, sale, transfer or carriage of certain goods)**
At the end of section 8(2)—
Add
“(m) the prohibited goods do not include any item covered by the Annex to Resolution 2111, and are intended solely for the development of the Security Forces of the Federal Government of Somalia, and to provide security for the Somali people;
(n) the prohibited goods are intended for defensive purposes and are—
(i) to be carried by a ship that enters a Somali port for a temporary visit; and
(ii) to remain aboard the ship at all times while the ship is in Somalia.”.

United Nations Sanctions (Somalia) (Amendment) Regulation 2016

L.N. 24 of 2016
B451

Section 3

3. **Section 9 amended (licence for provision of certain advice, assistance or training)**

At the end of section 9(2)—

Add

“(j) the advice, assistance or training is intended solely for the development of the Security Forces of the Federal Government of Somalia, and to provide security for the Somali people.”.

4. **Section 10 amended (licence for making available funds, etc. to certain persons or entities or dealing with funds, etc. of certain persons or entities)**

At the end of section 10(2)—

Add

“(f) the funds or other financial assets or economic resources are necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia by—

- (i) the United Nations, its specialized agencies or programmes, or humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance; or
- (ii) their implementing partners, including bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plan for Somalia.”.

5. **Section 32 amended (duration)**

At the end of section 32—

Add

“(4) Sections 8(2)(m), 9(2)(j) and 10(2)(f) expire at midnight on 15 November 2016.”.

C. Y. LEUNG
Chief Executive

26 January 2016

Explanatory Note

This Regulation gives effect to certain decisions in Resolution 2244 (2015) as adopted by the Security Council of the United Nations on 23 October 2015 by amending the licensing requirements for—

- (a) the supply, sale, transfer or carriage of certain goods;
- (b) providing certain advice, assistance or training;
- (c) making available funds or other financial assets or economic resources to certain persons or entities; and
- (d) dealing with funds or other financial assets or economic resources of certain persons or entities.

United Nations

S/RES/2244 (2015)

**Security Council**Distr.: General
23 October 2015

Resolution 2244 (2015)**Adopted by the Security Council at its 7541st meeting, on
23 October 2015***The Security Council,*

Recalling all its previous resolutions and statements of its President on the situation in Somalia and Eritrea, in particular resolutions 733 (1992), 1844 (2008), 1907 (2009), 2036 (2012), 2023 (2011), 2093 (2013), 2111 (2013), 2124 (2013), 2125 (2013), 2142 (2014), and 2182 (2014),

Taking note of the final reports of the Somalia and Eritrea Monitoring Group (the SEMG) (on Somalia ([S/2015/801](#)) and Eritrea ([S/2015/802](#))) and their conclusions on the situations in both Somalia and Eritrea,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, Djibouti and Eritrea respectively,

Condemning any flows of weapons and ammunition supplies to and through Somalia in violation of the arms embargo on Somalia and to Eritrea in violation of the arms embargo on Eritrea, as a serious threat to peace and stability in the region,

Expressing concern that Al-Shabaab continues to pose a serious threat to the peace and stability of Somalia and the region,

Welcoming the improved relationship between the Federal Government of Somalia (FGS) and the SEMG, and *underlining* the importance of this relationship improving further and strengthening in the future,

Welcoming the efforts of the FGS to improve its notifications to the Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea ("the Committee"), and *looking forward* to further needed progress in the future, particularly in relation to post-delivery notifications, and *recalling* that improved arms and ammunition management in Somalia is a fundamental component of greater peace and stability for the region,

Underlining the importance of financial propriety in the run up to, and conduct of, elections in Somalia in 2016, and *stressing* the need for further efforts to fight corruption, promote transparency and increase mutual accountability in Somalia,

Expressing serious concern at reports of illegal fishing in waters where Somalia has jurisdiction, *underlining* the importance of refraining from illegal



fishing, and *encouraging* the FGS, with the support of the international community, to ensure that fishing licenses are issued in a responsible manner and in line with the appropriate Somali legal framework,

Expressing serious concern at the increasing difficulties in delivering humanitarian aid in Somalia, *condemning* in the strongest terms any party obstructing the delivery of humanitarian assistance, as well as the misappropriation or diversion of any humanitarian funds,

Recalling that the FGS has the primary responsibility to protect its population, and *recognising* the FGS' responsibility to build its own national security forces,

Taking note of the two videoconference meetings and three letters between the representative of the Government of Eritrea and the SEMG, expressing concern that the SEMG has not been able to visit Eritrea since 2011 and fully discharge its mandate *urging* the Government of Eritrea to deepen its cooperation with the SEMG, including through regular visits to Eritrea by the SEMG, and *underlining* that deepened cooperation will help the Security Council be better informed about Eritrea's compliance with the relevant Security Council resolutions,

Taking note that during the course of its current and previous mandate the SEMG has not found any evidence that the Government of Eritrea is supporting Al-Shabaab,

Expressing concern over reports by the SEMG of ongoing Eritrean support for certain regional armed groups, and *encouraging* the SEMG to provide further detailed reporting and evidence on this issue,

Underlining the importance it attaches to all Member States complying with the terms of the arms embargo imposed on Eritrea by resolution 1907 (2009),

Stressing its demand that Eritrea make available information, including to the SEMG, pertaining to the Djiboutian combatants missing in action since the clashes of 2008 so that those concerned may ascertain the presence and conditions of the Djiboutian prisoners of war, and *expressing* its hope that the mediation efforts of the State of Qatar helps lead to the resolution of this issue as well as the border dispute between Djibouti and Eritrea,

Determining that the situation in Somalia, as well as the dispute between Djibouti and Eritrea, continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reaffirms* the arms embargo on Somalia, imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon in paragraphs 1 and 2 of resolution 1425 (2002) and modified by paragraphs 33 to 38 of resolution 2093 (2013) and paragraphs 4 to 17 of resolution 2111 (2013), paragraph 14 of resolution 2125 (2013), and paragraph 2 of resolution 2142 (2014) (hereafter referred to as "the arms embargo on Somalia");

2. *Decides* to renew the provisions set out in paragraph 2 of resolution 2142 (2014) until 15 November 2016, and in that context *reiterates* that the arms embargo on Somalia shall not apply to deliveries of weapons, ammunition or military equipment or the provision of advice, assistance or training, intended solely for the development of the Security Forces of the FGS, to provide security for the Somali

people, except in relation to deliveries of the items set out in the annex of resolution 2111 (2013);

3. *Affirms* that the entry into Somali ports for temporary visits of vessels carrying arms and related materiel for defensive purposes does not amount to a delivery of such items in violation of the arms embargo on Somalia, provided that such items remain at all times aboard such vessels;

4. *Requests* the Committee, within 90 days of adoption of this resolution, to publish an implementation assistance notice summarising the arms embargo restrictions in place for Somalia and Eritrea, as well as outlining exemptions to the arms embargo;

5. *Reiterates* that weapons or military equipment sold or supplied solely for the development of the Security Forces of the Federal Government of Somalia may not be resold to, transferred to, or made available for use by, any individual or entity not in the service of the Security Forces of the Federal Government of Somalia, and *underlines* the responsibility of the Federal Government of Somalia to ensure the safe and effective management, storage and security of their stockpiles;

6. *Welcomes* in this regard the commencement, by the FGS, of a more rigorous weapons registration, recording and marking procedure, *expresses concern* at reports of continued weapons diversion from within the FGS, *notes* that further improved weapons management is vital in order to prevent the diversion of weapons, *calls upon* the FGS to conduct a baseline inventory of military equipment, arms and ammunition in the possession of the security forces of the FGS, assessed against their respective strength and needs, and *urges* Member States to support improved weapons and ammunition management and the establishment of a 'Joint Verification Team' to improve the capacity of the FGS to manage weapons and ammunition;

7. *Requests* the FGS to report to the Security Council by 15 April 2016 and then by 15 October 2016 in accordance with paragraph 9 of resolution 2182 (2014), and *calls on* the FGS to include more information in its reporting, including through the provision of full and accurate information on the structure, composition, strength and disposition of its security forces, including the status of regional and militia forces;

8. *Recalls* that the Federal Government of Somalia has the primary responsibility to notify the Committee, pursuant to paragraphs 3 to 8 of resolution 2142 (2014), *welcomes* the efforts of the FGS in improving its notifications to the Committee, and *calls upon* the FGS to improve the timeliness and content of notifications regarding the completion of deliveries, as set out in paragraph 6 of resolution 2142 (2014) and the destination unit upon distribution of imported arms and ammunition, as set out by paragraph 7 of resolution 2142 (2014);

9. *Underlines* the importance of Member States coordinating with the Office of the National Security Adviser of Somalia, which coordinates FGS reporting obligations to the Security Council pursuant to the notification procedures set out in paragraphs 3 to 7 of resolution 2142 (2014), and *underlines* the need for Member States to strictly follow the notification procedures for providing assistance to develop Somali security sector institutions;

10. *Urges* cooperation between AMISOM and the Somali National Army (SNA), as set out in paragraph 6 of resolution 2182 (2014), to document and register all military equipment captured as part of offensive operations or in the course of carrying out their mandates, involving other Security Forces of the Federal Government of Somalia as appropriate;

11. *Calls upon* the FGS to enhance civilian oversight of its security forces, in particular through investigation and prosecuting individuals responsible for violations of international humanitarian law, and in this context *recalls* the importance of the Secretary-General's Human Rights and Due Diligence Policy in relation to the support provided by the UN to the Somali National Army;

12. *Underlines* the importance of timely and predictable payment of salaries to the Somali security forces and *encourages* the FGS to implement systems to improve the timeliness and accountability of payments to Somali security forces;

13. *Further reaffirms* the arms embargo on Eritrea imposed by paragraphs 5 and 6 of resolution 1907 (2009) (hereafter referred to as "the arms embargo on Eritrea");

14. *Expresses concern* at the continued reports of corruption and diversion of public resources which pose a risk to state-building efforts, *expresses serious concern* at reports of financial impropriety involving members of the Federal Government, Regional Administrations and Federal Parliament, which pose a risk to state-building efforts, and in this context *underlines* that individuals engaged in acts which threaten the peace and reconciliation process in Somalia may be listed for targeted measures;

15. *Welcomes* the efforts which the FGS has made in order to improve its financial management procedures including engagement between the FGS and the International Monetary Fund (IMF), and *encourages* prompt implementation of IMF-recommended reforms to support the commencement of a Staff Monitored Programme; the development of the Somali Financial Management Information System; and the forthcoming independent review of the Financial Governance Committee;

16. *Reaffirms* Somalia's sovereignty over its natural resources;

17. *Reiterates its serious concern* that the petroleum sector in Somalia could be a driver for increased conflict, and in that context *underlines* the vital importance of the FGS putting in place, without undue delay, a resource-sharing arrangement and credible legal framework to ensure that the petroleum sector in Somalia does not become a source of increased tension;

18. *Reaffirms* the ban on the import and export of Somali charcoal, as set out in paragraph 22 of resolution 2036 (2012) ("the charcoal ban"), *condemns* the ongoing export of charcoal from Somalia, in violation of the total ban on the export of charcoal from Somalia, and *reiterates* that the Somali authorities shall take the necessary measures to prevent the export of charcoal from Somalia, and *further reiterates* its requests in paragraph 18 of resolution 2111 (2013), that AMISOM support and assist the Somali authorities in doing so, as part of AMISOM's implementation of its mandate set out in paragraph 1 of resolution 2093;

19. *Welcomes* the efforts of the Combined Maritime Forces (CMF) in their efforts to disrupt the export and import of charcoal to and from Somalia, and *further*

welcomes the cooperation between the SEMG and CMF in keeping the Committee informed on the charcoal trade;

20. *Expresses concern* that the charcoal trade provides funding for Al-Shabaab, and in that context *reiterates* paragraphs 11 to 21 of resolution 2182 (2014), and *further decides* to renew the provisions set out in paragraph 15 of resolution 2182 (2014) until 15 November 2016;

21. *Encourages* the UN Office on Drugs and Crime to continue its work, within its current mandate, under the Indian Ocean Forum on Maritime Crime to bring together relevant Member States and international organisations to develop strategies to disrupt the trade in Somali charcoal;

22. *Expresses* serious concern at the deterioration of the humanitarian situation in Somalia, *condemns* in the strongest terms increased attacks against humanitarian actors and any misuse of donor assistance and the obstruction of the delivery of humanitarian aid, and *reiterates* paragraph 10 of resolution 2158 (2014) in this regard;

23. *Decides* that until 15 November 2016 and without prejudice to humanitarian assistance programmes conducted elsewhere, the measures imposed by paragraph 3 of resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners including bilaterally or multilaterally funded NGOs participating in the United Nations Humanitarian Response Plan for Somalia;

24. *Requests* the Emergency Relief Coordinator to report to the Security Council by 15 October 2016 on the delivery of humanitarian assistance in Somalia and on any impediments to the delivery of humanitarian assistance in Somalia, and *requests* relevant United Nations agencies and humanitarian organizations having observer status with the United Nations General Assembly and their implementing partners that provide humanitarian assistance in Somalia to increase their cooperation and willingness to share information with the United Nations;

25. *Welcomes* the SEMG's ongoing and significant efforts to engage with the Government of Eritrea, in that context *recalls* the two meetings by video conference between the Representative of the Government of Eritrea and the SEMG, *reiterates* its expectation that the Government of Eritrea will facilitate the entry of the SEMG to Eritrea, to discharge fully its mandate, in line with its repeated requests, including in paragraph 52 of resolution 2182 (2014); and *underlines* that deepened cooperation will help the Security Council be better informed about Eritrea's compliance with the relevant Security Council resolutions;

26. *Calls on* Eritrea to cooperate with the SEMG, including on public finance issues, in accordance with the SEMG's mandate, in order to demonstrate that Eritrea is not violating the terms of relevant Security Council resolutions;

27. *Urges* the Government of Eritrea to allow access or provide information, including to the SEMG, on the Djiboutian prisoners of war missing in action since the clashes of 10 to 12 June 2008, and *expresses* its hope that the mediation efforts

led by the State of Qatar helps lead to the resolution of this issue and the dispute between Eritrea and Djibouti;

28. *Recalls* resolution 1844 (2008) which imposed targeted sanctions and resolutions 2002 (2011) and 2093 (2013) which expanded the listing criteria, and notes one of the listing criteria under resolution 1844 (2008) is engaging in acts that threaten the peace, security or stability of Somalia;

29. *Reiterates* its willingness to adopt targeted measures against individuals and entities on the basis of the above mentioned criteria;

30. *Requests* Member States to assist the Monitoring Group in their investigations, and reiterates that obstructing the investigations or work of the Monitoring Group is a criterion for listing under paragraph 15 (e) of resolution 1907 (2009);

31. *Decides* to extend until 15 December 2016 the mandate of the Somalia and Eritrea Monitoring Group as set out in paragraph 13 of resolution 2060 (2012) and updated in paragraph 41 of resolution 2093 (2013), *expresses its intention* to review the mandate and take appropriate action regarding the further extension no later than 15 November 2016, and *requests* the Secretary-General to take the necessary administrative measures as expeditiously as possible to re-establish the Monitoring Group, in consultation with the Committee, until 15 December 2016, drawing, as appropriate, on the expertise of the members of the Monitoring Group established pursuant to previous resolutions;

32. *Requests* the Monitoring Group to provide monthly updates to the Committee, and a comprehensive midterm update, as well as to submit, for the Security Council's consideration, through the Committee, two final reports; one focusing on Somalia, the other on Eritrea by 15 October 2016, covering all the tasks set out in paragraph 13 of resolution 2060 (2012) and updated in paragraph 41 of resolution 2093 (2013) and paragraph 15 of resolution 2182 (2014);

33. *Requests* the Committee, in accordance with its mandate and in consultation with the Monitoring Group and other relevant United Nations entities to consider the recommendations contained in the reports of the Monitoring Group and recommend to the Council ways to improve the implementation of and compliance with the Somalia and Eritrea arms embargoes, the measures regarding the import and export of charcoal from Somalia, as well as implementation of the measures imposed by paragraphs 1, 3 and 7 of resolutions 1844 (2008) and paragraphs 5, 6, 8, 10, 12 and 13 of resolution 1907 (2009) in response to continuing violations;

34. *Decides* to remain seized of the matter.

United Nations Sanctions Ordinance (Cap. 537)

**United Nations Sanctions (Somalia) (Amendment)
Regulation 2016**

This is to confirm that the Chief Executive received specific instruction from the Ministry of Foreign Affairs of the People's Republic of China in December 2015 which requested the Government of the Hong Kong Special Administrative Region to fully implement Resolution No. 2244 of the Security Council of the United Nations, and that the United Nations Sanctions (Somalia) (Amendment) Regulation 2016 was made in pursuance of that instruction.

Dated this 26th day of *January* 2016



(Mrs Carrie Lam)
Chief Secretary for Administration

United Nations Sanctions (Somalia) Regulation

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United Nations Sanctions (Somalia) Regulation

(Made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council)

Part 1

Preliminary

1. Interpretation

In this Regulation—

AMISOM (非索特派團) means the African Union Mission in Somalia;

authorized officer (獲授權人員) means—

- (a) a police officer;
- (b) a member of the Customs and Excise Service holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); or
- (c) a public officer employed in the Customs and Excise Department in the Trade Controls Officer Grade;

Commissioner (關長) means the Commissioner of Customs and Excise, any Deputy Commissioner of Customs and Excise or any Assistant Commissioner of Customs and Excise;

Committee (委員會) means the Committee of the Security Council established under paragraph 11 of Resolution 751;

designated person (指認人士) means a person or an entity designated by the Committee—

- (a) as engaging in, or providing support for, acts that threaten the peace, security or stability of Somalia, including acts that threaten the peace and reconciliation process in Somalia, or threaten the Federal Government of Somalia or AMISOM by force;
- (b) as having acted in violation of—
 - (i) the arms embargo imposed by paragraph 5 of Resolution 733, as further elaborated upon by paragraphs 1 and 2 of Resolution 1425, and as amended by paragraphs 33 to 38 of Resolution 2093;
 - (ii) the arms resale and transfer restrictions set out in paragraph 34 of Resolution 2093;
- (c) as obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;
- (d) as being political or military leaders recruiting or using children in armed conflicts in Somalia in violation of applicable international law; or
- (e) as being responsible for violations of applicable international law in Somalia involving the targeting of civilians including children and women in situations of armed conflict, including killing and maiming, sexual and gender-based violence, attacks on schools and hospitals and abduction and forced displacement;

economic resources (經濟資源) means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;

funds (資金) includes—

- (a) gold coin, gold bullion, 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) securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts);
- (d) interest, dividends or other income on or value accruing from or generated by property;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading and bills of sale; and
- (g) documents evidencing an interest in funds or financial resources, and any other instrument of export financing;

licence (特許) means a licence granted under section 8(1)(a) or (b), 9(1) or 10(1);

master (船長), in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

operator (營運人), in relation to a ship, aircraft or vehicle, means the person for the time being having the management of the ship, aircraft or vehicle;

person connected with Somalia (有關連人士) means—

- (a) the Government of Somalia;
- (b) any person in, or resident in, Somalia;
- (c) any body incorporated or constituted under the law of Somalia;
- (d) any body, wherever incorporated or constituted, which is controlled by—

- (i) the Government mentioned in paragraph (a);
- (ii) a person mentioned in paragraph (b); or
- (iii) a body mentioned in paragraph (c); or
- (e) any person acting on behalf of—
 - (i) the Government mentioned in paragraph (a);
 - (ii) a person mentioned in paragraph (b); or
 - (iii) a body mentioned in paragraph (c) or (d),but does not include a designated person;

pilot in command (機長), in relation to an aircraft, means the pilot designated by the operator or the owner, as appropriate, as being in charge of the aircraft without being under the direction of any other pilot in the aircraft and charged with the safe conduct of a flight;

prohibited goods (禁制物品) means any weapons or military equipment;

relevant entity (有關實體) means—

- (a) an entity specified by the Chief Executive as a relevant entity in accordance with section 30; or
- (b) an entity acting on behalf of, or at the direction of, or owned or controlled directly or indirectly by, a person or entity specified by the Chief Executive as a relevant person or relevant entity in accordance with section 30;

relevant person (有關人士) means—

- (a) a person specified by the Chief Executive as a relevant person in accordance with section 30; or
- (b) a person acting on behalf of, or at the direction of, a person or entity specified by the Chief Executive as a relevant person or relevant entity in accordance with section 30;

Resolution 733 (《第 733 號決議》) means Resolution 733 (1992) adopted by the Security Council on 23 January 1992;

Resolution 751 (《第 751 號決議》) means Resolution 751 (1992) adopted by the Security Council on 24 April 1992;

Resolution 1425 (《第 1425 號決議》) means Resolution 1425 (2002) adopted by the Security Council on 22 July 2002;

Resolution 1844 (《第 1844 號決議》) means Resolution 1844 (2008) adopted by the Security Council on 20 November 2008;

Resolution 2093 (《第 2093 號決議》) means Resolution 2093 (2013) adopted by the Security Council on 6 March 2013;

Resolution 2111 (《第 2111 號決議》) means Resolution 2111 (2013) adopted by the Security Council on 24 July 2013;

Security Council (安全理事會) means the Security Council of the United Nations.

Part 2

Prohibitions

2. Prohibition against supply, sale or transfer of certain goods

- (1) This section applies to—
 - (a) a person acting in the HKSAR; and
 - (b) a person acting outside the HKSAR who is—
 - (i) both a Hong Kong permanent resident and a Chinese national; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.
- (2) Except under the authority of a licence granted under section 8(1)(a), a person must not supply, sell or transfer, or agree to supply, sell or transfer, directly or indirectly, or do any act likely to promote the supply, sale or transfer of, any prohibited goods—
 - (a) to Somalia;
 - (b) to, or to the order of, a person connected with Somalia; or
 - (c) to a destination for the purpose of delivery or transfer, directly or indirectly, to Somalia or to, or to the order of, a person connected with Somalia.
- (3) A person must not supply, sell or transfer, or agree to supply, sell or transfer, directly or indirectly, or do any act likely to promote the supply, sale or transfer of, any prohibited goods—
 - (a) to, or to the order of, a designated person; or

- (b) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, a designated person.
- (4) A person who contravenes subsection (2) or (3) commits an offence and is liable—
 - (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person did not know and had no reason to believe—
 - (a) that the goods concerned were prohibited goods;
 - (b) for a contravention of subsection (2), that the goods concerned were or were to be supplied, sold or transferred—
 - (i) to Somalia;
 - (ii) to, or to the order of, a person connected with Somalia; or
 - (iii) to a destination for the purpose of delivery or transfer, directly or indirectly, to Somalia or to, or to the order of, a person connected with Somalia; or
 - (c) for a contravention of subsection (3), that the goods concerned were or were to be supplied, sold or transferred—
 - (i) to, or to the order of, a designated person; or
 - (ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, a designated person.

3. Prohibition against carriage of certain goods

- (1) This section applies to—
 - (a) a ship that is registered in the HKSAR;
 - (b) an aircraft that is registered in the HKSAR;
 - (c) any other ship or aircraft that is for the time being chartered to a person who is—
 - (i) in the HKSAR;
 - (ii) both a Hong Kong permanent resident and a Chinese national; or
 - (iii) a body incorporated or constituted under the law of the HKSAR; and
 - (d) a vehicle in the HKSAR.
- (2) Without limiting section 2, except under the authority of a licence granted under section 8(1)(b), a ship, aircraft or vehicle must not be used for the carriage of any prohibited goods if the carriage is, or forms part of, a carriage—
 - (a) from a place outside Somalia to a place in Somalia;
 - (b) to, or to the order of, a person connected with Somalia; or
 - (c) to a destination for the purpose of delivery or transfer, directly or indirectly, to Somalia or to, or to the order of, a person connected with Somalia.
- (3) Subsection (2) does not apply if—
 - (a) the carriage of the prohibited goods is performed in the course of the supply, sale or transfer of the prohibited goods; and
 - (b) the supply, sale or transfer was authorized by a licence granted under section 8(1)(a).

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- (4) Without limiting section 2, a ship, aircraft or vehicle must not be used for the carriage of any prohibited goods if the carriage is, or forms part of, a carriage—
- (a) to, or to the order of, a designated person; or
 - (b) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, a designated person.
- (5) If a ship, aircraft or vehicle is used in contravention of subsection (2) or (4), each of the following persons commits an offence—
- (a) for a ship registered in the HKSAR, the charterer, the operator and the master of the ship;
 - (b) for any other ship—
 - (i) the charterer of the ship, if the charterer is in the HKSAR, or is both a Hong Kong permanent resident and a Chinese national, or is a body incorporated or constituted under the law of the HKSAR;
 - (ii) the operator of the ship, if the operator is in the HKSAR, or is both a Hong Kong permanent resident and a Chinese national, or is a body incorporated or constituted under the law of the HKSAR; and
 - (iii) the master of the ship, if the master is in the HKSAR or is both a Hong Kong permanent resident and a Chinese national;
 - (c) for an aircraft registered in the HKSAR, the charterer, the operator and the pilot in command of the aircraft;
 - (d) for any other aircraft—

- (i) the charterer of the aircraft, if the charterer is in the HKSAR, or is both a Hong Kong permanent resident and a Chinese national, or is a body incorporated or constituted under the law of the HKSAR;
 - (ii) the operator of the aircraft, if the operator is in the HKSAR, or is both a Hong Kong permanent resident and a Chinese national, or is a body incorporated or constituted under the law of the HKSAR; and
 - (iii) the pilot in command of the aircraft, if the pilot in command is in the HKSAR or is both a Hong Kong permanent resident and a Chinese national;
- (e) for a vehicle, the operator and the driver of the vehicle.
- (6) A person who commits an offence under subsection (5) is liable—
 - (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (7) It is a defence for a person charged with an offence under subsection (5) to prove that the person did not know and had no reason to believe—
 - (a) that the goods concerned were prohibited goods;
 - (b) for a contravention of subsection (2), that the carriage of the goods concerned was, or formed part of, a carriage—
 - (i) from a place outside Somalia to a place in Somalia;
 - (ii) to, or to the order of, a person connected with Somalia; or

- (iii) to a destination for the purpose of delivery or transfer, directly or indirectly, to Somalia or to, or to the order of, a person connected with Somalia; or
- (c) for a contravention of subsection (4), that the carriage of the goods concerned was, or formed part of, a carriage—
 - (i) to, or to the order of, a designated person; or
 - (ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, a designated person.

4. Prohibition against provision of certain advice, assistance or training

- (1) This section applies to—
 - (a) a person acting in the HKSAR; and
 - (b) a person acting outside the HKSAR who is—
 - (i) both a Hong Kong permanent resident and a Chinese national; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.
- (2) Except under the authority of a licence granted under section 9(1), a person must not provide, directly or indirectly, to a person connected with Somalia any technical advice, financial or other assistance or training related to military activities.
- (3) A person must not provide, directly or indirectly, to a designated person any technical assistance or training, or financial or other assistance including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of any prohibited goods.

- (4) A person who contravenes subsection (2) or (3) commits an offence and is liable—
 - (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person did not know and had no reason to believe—
 - (a) for a contravention of subsection (2)—
 - (i) that the advice, assistance or training concerned was or was to be provided to a person connected with Somalia; or
 - (ii) that the advice, assistance or training concerned related to military activities; or
 - (b) for a contravention of subsection (3)—
 - (i) that the assistance or training concerned was or was to be provided to a designated person; or
 - (ii) that the assistance or training concerned related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of any prohibited goods.

4A. Prohibition against importation of charcoal

- (1) A person must not import, directly or indirectly, any charcoal from Somalia into the HKSAR.
- (2) Subsection (1) applies whether or not the charcoal concerned was originated in Somalia.
- (3) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person did not know and had no reason to believe that the charcoal concerned was imported, directly or indirectly, from Somalia into the HKSAR.

5. Prohibition against making available funds, etc. or dealing with funds, etc.

- (1) This section applies to—
 - (a) a person acting in the HKSAR; and
 - (b) a person acting outside the HKSAR who is—
 - (i) both a Hong Kong permanent resident and a Chinese national; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.
- (2) Except under the authority of a licence granted under section 10(1)—
 - (a) a person must not make available, directly or indirectly, any funds or other financial assets or economic resources to, or for the benefit of, a relevant person or a relevant entity; and
 - (b) a person (*first-mentioned person*) must not deal with, directly or indirectly, any funds or other financial assets or economic resources belonging to, or owned or controlled by, a relevant person or a relevant entity, and if the first-mentioned person is a relevant person or a relevant entity, including any funds and other financial

assets or economic resources belonging to, or owned or controlled by, the first-mentioned person.

- (4) A person who contravenes subsection (2) commits an offence and is liable—
 - (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person did not know and had no reason to believe—
 - (a) that the funds or other financial assets or economic resources concerned were or were to be made available to, or for the benefit of, a relevant person or a relevant entity; or
 - (b) that the person was dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, a relevant person or a relevant entity.
- (6) A person is not to be regarded as having contravened subsection (2) by reason only of having credited an account belonging to, or owned or controlled by, a relevant person or a relevant entity with—
 - (a) interest or other earnings due on that account; or
 - (b) payment due under contracts, agreements or obligations that arose before the date on which the person or entity became a relevant person or a relevant entity.
- (7) In this section—

deal with (處理) means—

 - (a) in respect of funds—
 - (i) use, alter, move, allow access to or transfer;

- (ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
 - (iii) make any other change that would enable use, including portfolio management; and
- (b) in respect of other financial assets or economic resources, use to obtain funds, goods or services in any way, including by selling, hiring or mortgaging the assets or resources.

6. Prohibition against entry or transit by certain persons

- (1) Subject to section 7, a designated person must not enter or transit through the HKSAR.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.
- (3) This section does not apply to a person having the right of abode or the right to land in the HKSAR.

7. Exceptions to prohibition against entry or transit by certain persons

Section 6 does not apply to a case in respect of which—

- (a) the Committee has determined that the relevant entry into or transit through the HKSAR is justified on the ground of humanitarian need, including religious obligation; or
 - (b) the Committee has determined that the relevant entry into or transit through the HKSAR would otherwise further the objectives of peace and national reconciliation in Somalia and stability in the region.
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Part 3

Licences

8. Licence for supply, sale, transfer or carriage of certain goods

- (1) If satisfied on application that any of the requirements in subsection (2) is met, the Chief Executive must, subject to subsection (3), grant, as appropriate—
 - (a) a licence for the supply, sale or transfer of, or the doing of an act likely to promote the supply, sale or transfer of, prohibited goods—
 - (i) to Somalia;
 - (ii) to, or to the order of, a person connected with Somalia; or
 - (iii) to a destination for the purpose of delivery or transfer, directly or indirectly, to Somalia or to, or to the order of, a person connected with Somalia; or
 - (b) a licence for the carriage of prohibited goods that is, or forms part of, a carriage—
 - (i) from a place outside Somalia to a place in Somalia;
 - (ii) to, or to the order of, a person connected with Somalia; or
 - (iii) to a destination for the purpose of delivery or transfer, directly or indirectly, to Somalia or to, or to the order of, a person connected with Somalia.
- (2) The requirements are as follows—
 - (a) the prohibited goods are protective clothing, including flak jackets and military helmets, to be temporarily exported to Somalia by the personnel of the United

Nations, representatives of the media, humanitarian or development workers or associated personnel, for their personal use only;

- (b) the prohibited goods are non-lethal military equipment intended solely for humanitarian or protective use;
- (c) the prohibited goods are intended solely for the support of or use by AMISOM;
- (d) the prohibited goods are intended solely for the purposes of helping develop Somali security sector institutions;
- (e) *(expired)*
- (f) the prohibited goods are intended solely for the support of or use by AMISOM's strategic partners, operating solely under the African Union Strategic Concept of 5 January 2012 (or subsequent African Union strategic concepts), and in cooperation and coordination with AMISOM;
- (g) the prohibited goods are intended solely for the support of or use by the personnel of the United Nations, including the United Nations Assistance Mission in Somalia;
- (h) the prohibited goods are any of the items covered by the Annex to Resolution 2111 and to be supplied to the Federal Government of Somalia, as approved in advance by the Committee on a case-by-case basis;
- (i) the prohibited goods are intended solely for the support of or use by the European Union Training Mission in Somalia;
- (j) the prohibited goods are intended solely for the undertaking of measures that are consistent with applicable international humanitarian and human rights law to suppress acts of piracy and armed robbery at sea

off the coast of Somalia, on the request of Somali authorities for which they have notified the Secretary-General of the United Nations;

(k) *(expired)*

(l) *(expired)*

(m) the prohibited goods do not include any item covered by the Annex to Resolution 2111, and are intended solely for the development of the Security Forces of the Federal Government of Somalia, and to provide security for the Somali people;

(n) the prohibited goods are intended for defensive purposes and are—

(i) to be carried by a ship that enters a Somali port for a temporary visit; and

(ii) to remain aboard the ship at all times while the ship is in Somalia.

(3) If the Chief Executive determines that—

(a) the requirement in subsection (2)(b) is met, the Chief Executive must cause the Committee to be notified of the determination 5 days before granting a licence under subsection (1);

(b) the requirement in subsection (2)(d) is met, the Chief Executive—

(i) must cause the Committee to be notified of the intention to grant a licence under subsection (1); and

(ii) must grant the licence in the absence of a negative decision by the Committee within 5 working days of receiving the notification.

9. Licence for provision of certain advice, assistance or training

- (1) If satisfied on application that any of the requirements in subsection (2) is met, the Chief Executive must, subject to subsection (3), grant a licence to provide to a person connected with Somalia technical advice, financial or other assistance or training related to military activities.
- (2) The requirements are as follows—
 - (a) the assistance or training is technical training or assistance intended solely for the support of or use by AMISOM;
 - (b) the assistance or training is technical assistance or training intended solely for the purposes of helping develop Somali security sector institutions;
 - (c) *(expired)*
 - (d) the assistance is intended solely for the support of or use by AMISOM's strategic partners, operating solely under the African Union Strategic Concept of 5 January 2012 (or subsequent African Union strategic concepts), and in cooperation and coordination with AMISOM;
 - (e) the assistance is intended solely for the support of or use by the personnel of the United Nations, including the United Nations Assistance Mission in Somalia;
 - (f) the assistance or training is technical training or assistance intended solely for the support of or use by the European Union Training Mission in Somalia;
 - (g) the assistance is intended solely for the undertaking of measures that are consistent with applicable international humanitarian and human rights law to suppress acts of piracy and armed robbery at sea off the coast of Somalia, on the request of Somali authorities for which they have notified the Secretary-General of the United Nations;

(h) (*expired*)

(i) (*expired*)

(j) the advice, assistance or training is intended solely for the development of the Security Forces of the Federal Government of Somalia, and to provide security for the Somali people.

(3) If the Chief Executive determines that the requirement in subsection (2)(b) is met, the Chief Executive—

(a) must cause the Committee to be notified of the intention to grant a licence under subsection (1); and

(b) must grant the licence in the absence of a negative decision by the Committee within 5 working days of receiving the notification.

10. Licence for making available funds, etc. to certain persons or entities or dealing with funds, etc. of certain persons or entities

(1) If on application the Chief Executive determines that any of the requirements in subsection (2) is met, the Chief Executive must, subject to subsection (3), grant, as appropriate, a licence for—

(a) making available funds or other financial assets or economic resources to, or for the benefit of, a relevant person or a relevant entity; or

(b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, a relevant person or a relevant entity.

(2) The requirements are as follows—

(a) the funds or other financial assets or economic resources are—

(i) necessary for basic expenses, including payment for foodstuffs, rents, mortgages, medicines,

medical treatments, taxes, insurance premiums and public utility charges;

- (ii) exclusively for the payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services; or
 - (iii) fees or service charges, under the law of the HKSAR, for the routine holding or maintenance of funds or other financial assets or economic resources belonging to, or owned or controlled by, a relevant person or a relevant entity;
- (b) the funds or other financial assets or economic resources are necessary for extraordinary expenses;
- (c) the funds or other financial assets or economic resources—
- (i) are the subject of a judicial, administrative or arbitral lien or judgment that was entered before 20 November 2008 and is not for the benefit of a relevant person or a relevant entity; and
 - (ii) are to be used to satisfy the lien or judgment;
- (d) *(expired)*
- (e) *(expired)*
- (f) the funds or other financial assets or economic resources are necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia by—
- (i) the United Nations, its specialized agencies or programmes, or humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance; or

(ii) their implementing partners, including bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plan for Somalia.

- (3) If the Chief Executive determines that—
- (a) the requirement in subsection (2)(a) is met, the Chief Executive—
 - (i) must cause the Committee to be notified of the intention to grant a licence under subsection (1); and
 - (ii) must grant the licence in the absence of a negative decision by the Committee within 3 working days of receiving the notification;
 - (b) the requirement in subsection (2)(b) is met, the Chief Executive—
 - (i) must cause the Committee to be notified of the determination; and
 - (ii) must not grant the licence unless the Committee approves the determination;
 - (c) the requirement in subsection (2)(c) is met, before granting the licence, the Chief Executive must cause the Committee to be notified of the determination.

11. Provision of false information or documents for purpose of obtaining licences

- (1) A person who, for the purpose of obtaining a licence, makes any statement or provides or produces any information or document that the person knows to be false in a material particular commits an offence and is liable—
- (a) on conviction on indictment to a fine and to imprisonment for 2 years; or

- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
 - (2) A person who, for the purpose of obtaining a licence, recklessly makes any statement or provides or produces any information or document that is false in a material particular commits an offence and is liable—
 - (a) on conviction on indictment to a fine and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
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Part 4

Things Done outside HKSAR

12. Licence or permission granted by authorities of places outside HKSAR

- (1) If the circumstances described in subsection (2) apply, a provision of this Regulation that prohibits the doing of a thing by a person except under the authority of a licence does not have effect in relation to any such thing done in a place outside the HKSAR by the person.
 - (2) For the purposes of subsection (1), the circumstances are that the thing is done by the person under the authority of a licence or with permission granted, in accordance with any law in force in that place outside the HKSAR (being a law substantially corresponding to the relevant provision of this Regulation), by the authority competent in that behalf under that law.
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Part 5

Enforcement of Regulation

Division 1—Investigation, etc. of Suspected Ships

13. Investigation of suspected ships

- (1) If an authorized officer has reason to suspect that a ship to which section 3 applies has been, is being or is about to be used in contravention of section 3(2) or (4), the officer may—
 - (a) either alone or accompanied and assisted by any person acting under the officer's authority, board the ship and search it and, for that purpose, use or authorize the use of reasonable force; and
 - (b) request the charterer, operator or master of the ship to provide any information relating to the ship or its cargo, or produce for inspection any of its cargo or any document relating to the ship or its cargo, that the officer may specify.
- (2) If an authorized officer has reason to suspect that a ship to which section 3 applies is being or is about to be used in contravention of section 3(2) or (4), the officer may, for the purpose of stopping or preventing the use of the ship in contravention of section 3(2) or (4) or to pursue enquiries, either there and then or on consideration of any information provided or cargo or document produced in response to a request made under subsection (1)(b), do one or more of the following—
 - (a) direct the charterer, operator or master of the ship to refrain, except with the consent of an authorized officer,

- from landing, at any port specified by the authorized officer, any part of the ship's cargo that is so specified;
- (b) request the charterer, operator or master of the ship to take any of the following steps—
- (i) to cause the ship and any of its cargo not to proceed with the voyage on which the ship is then engaged or about to be engaged until the charterer, operator or master is notified by an authorized officer that the ship and its cargo may so proceed;
 - (ii) if the ship is in the HKSAR, to cause the ship and any of its cargo to remain in the HKSAR until the charterer, operator or master is notified by an authorized officer that the ship and its cargo may depart;
 - (iii) if the ship is in any other place, to take the ship and any of its cargo to a port specified by an authorized officer, and to cause the ship and its cargo to remain in that place until the charterer, operator or master is notified by an authorized officer that the ship and its cargo may depart;
 - (iv) to take the ship and any of its cargo to another destination specified by an authorized officer in agreement with the charterer, operator or master.
- (3) A power conferred by this section to request a person to provide any information or produce any cargo or document for inspection includes a power to—
- (a) specify whether the information should be provided orally or in writing and in what form; and
 - (b) specify the time by which, and the place in which, the information should be provided or the cargo or document should be produced for inspection.

14. Offences by charterer, operator or master of ship

- (1) A charterer, operator or master of a ship who disobeys any direction given under section 13(2)(a), or, without reasonable excuse, refuses or fails to comply with a request made under section 13(1)(b) or (2)(b) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (2) A charterer, operator or master of a ship who, in response to a request made under section 13(1)(b) or (2)(b), provides or produces to an authorized officer any information or document that the charterer, operator or master knows to be false in a material particular, or recklessly provides or produces to an authorized officer any information or document that is false in a material particular, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

15. Power of authorized officers to enter and detain ships

- (1) Without limiting section 14, if an authorized officer has reason to suspect that a request that has been made under section 13(2)(b) may not be complied with, the officer may take any steps that appear to the officer to be necessary to secure compliance with that request including, in particular, any of the following steps—
 - (a) enter or authorize the entry on any land or the ship concerned;
 - (b) detain or authorize the detention of that ship or any of its cargo;
 - (c) use or authorize the use of reasonable force.

- (2) Subject to subsection (3), subsection (1) does not authorize the detention of a ship for more than 12 hours.
- (3) The Chief Secretary for Administration may, by order in writing, authorize the detention of a ship for further periods of not more than 12 hours each, and the order must state the time from which, and period for which, the order is effective.

Division 2—Investigation, etc. of Suspected Aircraft

16. Investigation of suspected aircraft

- (1) If an authorized officer has reason to suspect that an aircraft to which section 3 applies has been, is being or is about to be used in contravention of section 3(2) or (4), the officer may—
 - (a) either alone or accompanied and assisted by any person acting under the officer's authority, board the aircraft and search it and, for that purpose, use or authorize the use of reasonable force; and
 - (b) request the charterer, operator or pilot in command of the aircraft to provide any information relating to the aircraft or its cargo, or produce for inspection any of its cargo or any document relating to the aircraft or its cargo, that the officer may specify.
- (2) If the aircraft referred to in subsection (1) is in the HKSAR, an authorized officer may, either there and then or on consideration of any information provided or cargo or document produced in response to a request made under subsection (1)(b), further request the charterer, operator or pilot in command of the aircraft to cause the aircraft and any of its cargo to remain in the HKSAR until the charterer, operator or pilot in command is notified by an authorized officer that the aircraft and its cargo may depart.

- (3) A power conferred by this section to request a person to provide any information or produce any cargo or document for inspection includes a power to—
 - (a) specify whether the information should be provided orally or in writing and in what form; and
 - (b) specify the time by which, and the place in which, the information should be provided or the cargo or document should be produced for inspection.

17. Offences by charterer, operator or pilot in command of aircraft

- (1) A charterer, operator or pilot in command of an aircraft who, without reasonable excuse, refuses or fails to comply with a request made under section 16(1)(b) or (2) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (2) A charterer, operator or pilot in command of an aircraft who, in response to a request made under section 16(1)(b) or (2), provides or produces to an authorized officer any information or document that the charterer, operator or pilot in command knows to be false in a material particular, or recklessly provides or produces to an authorized officer any information or document that is false in a material particular, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

18. Power of authorized officers to enter and detain aircraft

- (1) Without limiting section 17, if an authorized officer has reason to suspect that a request that has been made under section 16(2) may not be complied with, the officer may take any steps that appear to the officer to be necessary to secure

compliance with that request including, in particular, any of the following steps—

- (a) enter or authorize the entry on any land or the aircraft concerned;
 - (b) detain or authorize the detention of that aircraft or any of its cargo;
 - (c) use or authorize the use of reasonable force.
- (2) Subject to subsection (3), subsection (1) does not authorize the detention of an aircraft for more than 6 hours.
- (3) The Chief Secretary for Administration may, by order in writing, authorize the detention of an aircraft for further periods of not more than 6 hours each, and the order must state the time from which, and period for which, the order is effective.

Division 3—Investigation, etc. of Suspected Vehicles

19. Investigation of suspected vehicles

- (1) If an authorized officer has reason to suspect that a vehicle in the HKSAR has been, is being or is about to be used in contravention of section 3(2) or (4), the officer may—
- (a) either alone or accompanied and assisted by any person acting under the officer's authority, board the vehicle and search it and, for that purpose, use or authorize the use of reasonable force;
 - (b) request the operator or driver of the vehicle to provide any information relating to the vehicle or any article carried on it, or produce for inspection any article carried on it or any document relating to the vehicle or any article carried on it, that the officer may specify; and

- (c) further request, either there and then or on consideration of any information provided or article or document produced in response to a request made under paragraph (b), the operator or driver to take the vehicle and any article carried on it to a place specified by an authorized officer, and to cause the vehicle and the article to remain in that place until the operator or driver is notified by an authorized officer that the vehicle and the article may depart.
- (2) A power conferred by this section to request a person to provide any information or produce any article or document for inspection includes a power to—
 - (a) specify whether the information should be provided orally or in writing and in what form; and
 - (b) specify the time by which, and the place in which, the information should be provided or the article or document should be produced for inspection.

20. Offences by operator or driver of vehicle

- (1) An operator or driver of a vehicle who, without reasonable excuse, refuses or fails to comply with a request made under section 19(1)(b) or (c) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (2) An operator or driver of a vehicle who, in response to a request made under section 19(1)(b) or (c), provides or produces to an authorized officer any information or document that the operator or driver knows to be false in a material particular, or recklessly provides or produces to an authorized officer any information or document that is false in

a material particular, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

21. Power of authorized officers to enter and detain vehicles

- (1) Without limiting section 20, if an authorized officer has reason to suspect that a request that has been made under section 19(1)(c) may not be complied with, the officer may take any steps that appear to the officer to be necessary to secure compliance with that request including, in particular, any of the following steps—
 - (a) enter or authorize the entry on any land or enter or authorize the entry into the vehicle concerned;
 - (b) detain or authorize the detention of that vehicle or any article carried on it;
 - (c) use or authorize the use of reasonable force.
- (2) Subject to subsection (3), subsection (1) does not authorize the detention of a vehicle for more than 12 hours.
- (3) The Commissioner may, by order in writing, authorize the detention of a vehicle for further periods of not more than 12 hours each, and the order must state the time from which, and period for which, the order is effective.

Division 4—Proof of Identity

22. Production of proof of identity

Before or on exercising a power conferred by section 13, 15, 16, 18, 19 or 21, an authorized officer must, if requested by any person so to do, produce proof of the officer's identity to the person for inspection.

Part 6

Evidence

23. Power of magistrate or judge to grant warrant

- (1) A magistrate or judge may grant a warrant if satisfied by information on oath given by an authorized officer that there are reasonable grounds for suspecting that—
 - (a) an offence under this Regulation has been committed or is being committed; and
 - (b) there is on any premises specified in the information, or on any ship, aircraft or vehicle so specified, evidence in relation to the commission of the offence.
- (2) A warrant granted under subsection (1) may authorize any authorized officer, together with any other person named in the warrant, to enter the premises, ship, aircraft or vehicle specified in the information or any premises on which the ship, aircraft or vehicle so specified may be, at any time within one month from the date of the warrant, and to search the premises, ship, aircraft or vehicle.
- (3) A person authorized by a warrant to search any premises, ship, aircraft or vehicle may exercise any or all of the following powers—
 - (a) search any person who is found on, or whom the authorized person has reasonable grounds to believe to have recently left or to be about to enter, the premises, ship, aircraft or vehicle;
 - (b) seize and detain any document, cargo or article found on the premises, ship, aircraft or vehicle or on any person referred to in paragraph (a) that the authorized person has reasonable grounds to believe to be evidence in

relation to the commission of an offence under this Regulation;

- (c) take in relation to any document, cargo or article seized under paragraph (b) any other steps that may appear necessary for preserving the document, cargo or article and preventing interference with it.
- (4) A person may only be searched under this section by a person who is of the same sex.
- (5) If a person is empowered under this section to enter any premises, ship, aircraft or vehicle, the person may use any force that is reasonably necessary for that purpose.

24. Detention of documents, cargoes or articles seized

- (1) Subject to subsection (2), any document, cargo or article seized under section 23(3) may not be detained for more than 3 months.
 - (2) If the document, cargo or article is relevant to an offence under this Regulation, and proceedings for the offence have begun, the document, cargo or article may be detained until the completion of those proceedings.
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Part 7

Disclosure of Information or Documents

25. Disclosure of information or documents

- (1) Any information or document provided, produced or seized under this Regulation may be disclosed only if—
 - (a) the person who provided or produced the information or document or from whom the document was seized has given consent to the disclosure;
 - (b) the information or document is disclosed to a person who would have been empowered under this Regulation to request that it be provided or produced;
 - (c) the information or document is disclosed on the authority of the Chief Executive, subject to the information or document being transmitted through and with the approval of the instructing authority, to—
 - (i) any organ of the United Nations;
 - (ii) any person in the service of the United Nations; or
 - (iii) the Government of any place outside the People's Republic of China,

for the purpose of assisting the United Nations or that Government in securing compliance with, or detecting evasion of, measures in relation to Somalia decided on by the Security Council; or
 - (d) the information or document is disclosed with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Regulation.
- (2) For the purposes of subsection (1)(a)—

- (a) a person may not give consent to the disclosure if the person has obtained the information or possessed the document only in the person's capacity as servant or agent of another person; and
 - (b) a person may give consent to the disclosure if the person is entitled to the information or to the possession of the document in the person's own right.
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Part 8

Other Offences and Miscellaneous Matters

26. Liability of persons other than principal offenders

- (1) If the person convicted of an offence under this Regulation is a body corporate and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, the director, manager, secretary or other similar officer is guilty of the like offence.
- (2) If the person convicted of an offence under this Regulation is a firm and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any partner in the firm or any person concerned in the management of the firm, the partner or the person concerned in the management of the firm is guilty of the like offence.

27. Offences in relation to obstruction of authorized persons, etc.

A person who obstructs another person (including a person acting under the authority of an authorized officer) in the exercise of the powers of that other person under this Regulation commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

28. Offences in relation to evasion of this Regulation

A person who destroys, mutilates, defaces, secretes or removes any document, cargo or article with intent to evade any of the provisions of this Regulation commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

29. Consent and time limit for proceedings

- (1) Proceedings for an offence under this Regulation may only be instituted by or with the consent of the Secretary for Justice.
- (2) Summary proceedings for an offence under this Regulation that is alleged to have been committed outside the HKSAR may be commenced at any time not later than 12 months from the date on which the person charged first enters the HKSAR after the alleged commission of the offence.

30. Specification of relevant person or relevant entity by Chief Executive

The Chief Executive may, by notice published in the Gazette, specify as a relevant person or a relevant entity a person or an entity designated by the Committee for the purposes of paragraph 3 of Resolution 1844.

31. Exercise of powers of Chief Executive

- (1) The Chief Executive may delegate any of the Chief Executive's powers or functions under this Regulation to any person or class or description of person.
- (2) The Chief Executive may authorize a person to whom a power or function is delegated to sub-delegate it to any other person or class or description of person.
- (3) A delegation or authorization under subsection (1) or (2) may be subject to any restrictions or conditions that the Chief Executive thinks fit.

32. Duration

(1) *(spent)*

(2) *(spent)*

(3) *(spent)*

(4) Sections 8(2)(m), 9(2)(j) and 10(2)(f) expire at midnight on 15 November 2016.

Explanatory Note

This Regulation gives effect to certain decisions in Resolution 2244 (2015) as adopted by the Security Council of the United Nations on 23 October 2015 by amending the licensing requirements for—

- (a) the supply, sale, transfer or carriage of certain goods;
- (b) providing certain advice, assistance or training;
- (c) making available funds or other financial assets or economic resources to certain persons or entities; and
- (d) dealing with funds or other financial assets or economic resources of certain persons or entities.

**United Nations Sanctions (Somalia) (Amendment) Regulation 2016
Information on Somalia**

Country Background

Somalia is a country in Eastern Africa, situated in the east of Ethiopia, bordering the Gulf of Aden and the Indian Ocean. It has a total area of 637,657 sq. km. and an estimated population of around 10.20 million in 2012. With its capital in Mogadishu, Somalia first achieved independence in 1960. The inauguration of the new Federal Parliament of Somalia on 20 August 2012 marked the end of transitional period following decades of warfare in the country. Dependent on its agricultural sector, Somalia had a GDP of US\$1.31 billion (or HK\$10.1 billion) in 2012 ^{Note 1}. Merchandise imports and exports of Somalia amounted to US\$ 1.3 billion (or HK\$9.8 billion) ^{Note 2} and US\$ 0.5 billion (or HK\$4.0 billion) respectively. ^{Note 3}

United Nations Sanctions against Somalia

2. The overthrow of Somali President Siad Barre in January 1991 left Somalia without a viable government. Fighting broke out, mainly between two major clans, with the support of a number of clan-based militias. By early 1992, the country's humanitarian situation was dire with more than 300,000 people estimated to have died of hunger and disease and another 1.5 million in danger of starvation. Against this background, in January 1992, the United Nations Security Council (UNSC) adopted Resolution 733 to impose an arms embargo against the country. Since then, the sanctions regime against Somalia was further expanded and amended by Resolutions 1356, 1725, 1744, 1772, etc.

^{Note 1} Source: World Statistics Pocket Book published by the United Nations Statistics Division at <http://unstats.un.org/unsd/pocketbook/WSPB2014.pdf>

^{Note 2} Source: The World Factbook, CIA, 2010 estimates at <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>

^{Note 3} Source: The World Factbook, CIA, 2012 estimates at <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>

3. Under the Djibouti Agreement reached in June 2008, Somalia's Transitional Federal Government (TFG) and the opposition Alliance for the Re-liberation of Somalia (ARS) agreed to end their conflict and to establish a unity government. To take measures against those who threatened the peace and the political processes and obstructed humanitarian assistance, UNSC adopted Resolution 1844 on 20 November 2008 to apply travel restrictions and an asset freeze to individuals and entities that engaged in such activities, in addition to those that breached the weapons ban, which was put in place by resolution 733 and amended by subsequent resolutions. On 22 February 2012, UNSC further tightened up sanctions in relation to Somalia by adopting Resolution 2036 to impose a charcoal ban against the country to cut off the main funding of Al-Shabaab, a prominent insurgent group in the country.

4. Noting that the situation in Somalia continues to pose a threat to international peace and security in the region and determining that the incidents of piracy and armed robbery at sea off the coast of Somalia are an important factor exacerbating the situation in Somalia, UNSC adopted Resolutions 2093, 2111, 2125, 2142 and 2182 on 6 March, 24 July, 28 November 2013, 5 March and 24 October 2014 respectively to modify or renew the exceptions to the arms embargo measures, the prohibition against the provision of advice, assistance and training, as well as financial sanctions in respect of Somalia. Recently, the UNSC adopted UNSCR 2244 on 23 October 2015 to renew certain exemptions applicable to arms embargo and assets freeze.^{Note 4}

Trade Relation between Hong Kong and Somalia

5. In 2014, Somalia ranked 170th among Hong Kong's trading partners in the world, with a total trade of HK\$36.9 million. Of these, HK\$24.4 million worth of trade were exports to Somalia, and HK\$12.5 million imports. Hong Kong's trade with Somalia are summarised as follows –

^{Note 4}

Source of information contained in paragraphs 2-4: UN Peacekeeping Operation Webpage at <http://www.un.org/en/peacekeeping/>, UN News Centre at <http://www.un.org/apps/news/>, Webpage of Security Council Committee pursuant to Resolutions 751 and 1907 concerning Somalia and Eritrea at <https://www.un.org/sc/suborg/en/sanctions/751>.

| Hong Kong's Trade with Somalia [Value in HK\$ (in million)] | | |
|--|------------------------|--------------------------------|
| Item | 2014 | January – November 2015 |
| (a) Total Exports to Somalia | 24.4 | 10.6 |
| <i>(i) Domestic exports</i> | 0.0 | 0.0 |
| <i>(ii) Re-exports</i> | 24.4 ^{Note 5} | 10.6 |
| (b) Imports from Somalia | 12.5 ^{Note 6} | 0.7 |
| Total Trade [(a) + (b)] | 36.9 | 11.3 |

In 2014, HK\$31 million worth of goods, or 1.7%^{Note 7} of the total trade between Somalia and the Mainland, were routed through Hong Kong. Of these, HK\$7.0 million worth of goods were re-exports from Somalia to Mainland^{Note 8}. The remaining HK\$24.1 million were re-exports of Mainland origin to Somalia via Hong Kong.

6. The sanctions against Somalia imposed by UNSC would unlikely affect the trade between Hong Kong and Somalia notably, as the major categories of commodities traded are not related to arms, charcoal or other related products. In addition, given the rather small trade volume between the two places, the United Nations sanctions against Somalia would unlikely have any significant effect on the Hong Kong economy.

Commerce and Economic Development Bureau

January 2016

^{Note 5} In 2014, Hong Kong's major re-export items to Somalia were telecommunications and sound recording and reproducing apparatus and equipment (76.8%); office machines and automatic data processing machines (7.3%); and professional, scientific and controlling instruments and apparatus (5.9%).

^{Note 6} In 2014, Hong Kong's major import items from Somalia were leather, leather manufactures, and dressed furskins (73.1%); vegetables and fruit (22.8%); and crude animal and vegetable materials (2.0%).

^{Note 7} The percentage is an estimate with reference to China's Customs Statistics and Hong Kong Trade Statistics.

^{Note 8} This re-export figure refers to goods produced in Somalia and re-exported through Hong Kong to the Mainland. These goods are not necessarily consigned from Somalia. It is possible that some goods produced in Somalia are sold to a third country before consigning to Hong Kong. Meanwhile, imports statistics reported in this Annex are based on country of consignment, but not country of origin.