

UNITED NATIONS SANCTIONS (GUINEA-BISSAU) REGULATION

INTRODUCTION

A At the meeting of the Executive Council on 25 September 2012, the Council advised and the Chief Executive (“CE”) ordered that the United Nations Sanctions (Guinea-Bissau) Regulation (“the Regulation”), at Annex A, should be made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (“UNSO”) to give effect to the instructions from the Ministry of Foreign Affairs of the People's Republic of China (“MFA”). The 2012 Regulation was gazetted on 28 September 2012 and came into operation on the same day.

BACKGROUND

Obligation and Authority

B & C 2. Under section 3(1) of the UNSO, the CE is required to make regulations to give effect to an instruction from the MFA to implement sanctions decided by the Security Council of the United Nations (“UNSC”). In June 2012, the CE received an instruction from the MFA requesting the Government of the Hong Kong Special Administrative Region (“HKSAR”) to implement sanctions against Guinea-Bissau in the HKSAR pursuant to the UNSC Resolution (“UNSCR”) 2048. The Regulation was made to give effect to the instruction. A document issued by the Chief Secretary for Administration confirming the MFA’s instruction and a copy of UNSCR 2048 are at Annexes B and C respectively.

Sanctions against Guinea-Bissau – UNSCR 2048

3. Concerned with the continuing instability and reported human rights violations in Guinea-Bissau caused by the military coup, the UNSC adopted UNSCR 2048 on 18 May 2012 to impose a travel ban on designated persons in relation to Guinea-Bissau. The UNSC, inter alia, decides that –

- (a) all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals listed in the annex of UNSCR 2048 or designated by the Committee established pursuant to paragraph 9 of UNSCR 2048 (“the Committee”), provided that nothing in this paragraph shall oblige a

State to refuse its own nationals entry into its territory (*paragraph 4 of UNSCR 2048 refers*); and

- (b) the measures imposed by paragraph 3(a) above shall not apply (*paragraph 5 of UNSCR 2048 refers*) –
 - (i) where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation;
 - (ii) where any entry or transit is necessary for the fulfilment of a judicial process; and
 - (iii) where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Guinea-Bissau and stability in the region.

THE REGULATION

4. The Regulation, at Annex A, seeks to implement the sanctions against Guinea-Bissau as per UNSCR 2048. The main provisions of the Regulation include -

- (a) **section 2**, which prohibits the entry into or transit through the HKSAR by certain persons; and
- (b) **section 3**, which provides for exceptions to prohibition against entry or transit by certain persons.

IMPLICATIONS OF THE PROPOSAL

5. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the UNSO. It has no financial, economic, productivity, environmental or sustainability implications. Additional workload arising from the enforcement of the Regulation, if any, will be absorbed by the relevant departments within existing resources.

PUBLICITY

6. A press release was issued on 28 September 2012 when the Regulation was published in the Gazette.

INFORMATION ON GUINEA-BISSAU AND RELATION WITH HKSAR

7. For information on Guinea-Bissau, background of the sanction regime against the country as well as its bilateral trade relation with the HKSAR, please refer to Annex D.

D

ADVICE SOUGHT

8. Members are invited to note the implementation of UNSCR 2048 in the HKSAR by the Regulation.

**Commerce and Economic Development Bureau
September 2012**

United Nations Sanctions (Guinea-Bissau) Regulation

L.N. 141 of 2012
B6285

Section 1

L.N. 141 of 2012

United Nations Sanctions (Guinea-Bissau) 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)

1. Interpretation

In this Regulation—

Committee (委員會) means the Committee of the Security Council established under paragraph 9 of Resolution 2048;

Resolution 2048 (《第2048號決議》) means Resolution 2048 (2012) adopted by the Security Council on 18 May 2012;

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

2. Prohibition against entry or transit by certain persons

- (1) Subject to section 3, a specified 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.
- (4) In this section—

specified person (指明人士) means—

- (a) a person designated by the Committee for the purposes of paragraph 4 of Resolution 2048; or
- (b) a person listed in the Annex to Resolution 2048.

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Section 3

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

Section 2 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;
- (b) the relevant entry or transit is necessary for the fulfilment of a judicial process; or
- (c) the Committee has determined that the relevant entry into or transit through the HKSAR would further the objectives of peace and national reconciliation in Guinea-Bissau and stability in the region.

4. Consent for proceedings

Proceedings for an offence under this Regulation may only be instituted by or with the consent of the Secretary for Justice.

C. Y. LEUNG
Chief Executive

26 September 2012

United Nations Sanctions (Guinea-Bissau) Regulation

Explanatory Note
Paragraph 1

L.N. 141 of 2012
B6289

Explanatory Note

The purpose of this Regulation is to give effect to certain decisions in Resolution 2048 (2012), as adopted by the Security Council of the United Nations on 18 May 2012, by providing for the prohibition against entry into or transit through the HKSAR by certain persons.

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Guinea-Bissau) Regulation

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 June 2012 which requested the Government of the Hong Kong Special Administrative Region to fully implement Resolution No. 2048 of the Security Council of the United Nations, and that the United Nations Sanctions (Guinea-Bissau) Regulation was made in pursuance of that instruction.

Dated this 27th day of September 2012



(Mrs Carrie Lam)
Chief Secretary for Administration

United Nations

S/RES/2048 (2012)

**Security Council**Distr.: General
18 May 2012

Resolution 2048 (2012)**Adopted by the Security Council at its 6774th meeting, on
18 May 2012***The Security Council,**Recalling* the Statement of its President of 21 April 2012 (S/PRST/2012/15) and the press statements of 12 April and 8 May on the situation in Guinea-Bissau,*Reiterating* its strong condemnation of the military coup on 12 April by the military leadership, which undermined the conclusion of the democratic electoral process in Guinea-Bissau, and of the establishment by the coup perpetrators of a “Military Command”,*Recalling* the unanimous condemnation of the military coup by the international community, including by the African Union (AU), the Economic Community of West African States (ECOWAS), the Community of Portuguese Speaking Countries (CPLP), the European Union (EU) and the Peacebuilding Commission (PBC),*Taking note of* the efforts by the AU, ECOWAS, CPLP and the EU in response to the current crisis and the mediation efforts led by ECOWAS in response to the recent military coup,*Underlining* the need for active and close coordination among international partners in order to restore constitutional order and develop a comprehensive strategy of stabilization to support Guinea-Bissau address its political, security and development challenges,*Taking note of* the calls by the Government of Guinea-Bissau for a response of the Security Council to the current crisis,*Taking note of* the release of interim President Raimundo Pereira, Prime Minister Carlos Gomes Júnior and other detained officials,*Deploing* the continued refusal of the “Military Command” to heed the Council’s demands, for the immediate restoration of the constitutional order, the reinstatement of the legitimate democratic Government of Guinea-Bissau and the resumption of the electoral process interrupted by the military coup,

Expressing concern about reports of cases of looting, including of State assets, human rights violations and abuses, including arbitrary detentions, ill treatment during detention, the repression of peaceful demonstrations and the restrictions on the freedom of movement imposed by the “Military Command” on a number of individuals, as noted in the Special Report of the Secretary-General on the situation in Guinea-Bissau (S/2012/280), and underlining that those responsible for such violations and abuses must be held accountable,

Affirming its condemnation of all acts of violence, including against women and children, and stressing the need to prevent violence,

Noting with deep concern the worrying humanitarian situation caused by the coup d’état and its negative impact on the economic activity in the country,

Stressing the importance of Security Sector Reform implementation, including effective and responsible civilian control over the security forces, as a crucial element for long term stability in Guinea-Bissau, as envisaged in the Guinea-Bissau/ECOWAS/CPLP Roadmap and underlining the responsibility of police forces in Guinea-Bissau to protect state institutions and the civilian population,

Deploing the recurrent illegal interference of the military leadership in the political process in Guinea-Bissau and expressing concern that interference of the military in politics and the impact of illicit drug trafficking and organized crime in Guinea-Bissau have significantly hampered efforts to establish rule of law and good governance and tackle impunity and corruption,

Expressing grave concern over the negative impacts of illicit drug trafficking and organized crime on Guinea-Bissau and the subregion,

Expressing deep concern about the possible increase in illicit drug trafficking as a result of the military coup,

Underlining that any lasting solution to instability in Guinea-Bissau should include concrete actions to fight impunity and ensure that those responsible for politically-motivated assassinations and other serious crimes such as illicit drug-trafficking-related activities and breaches of constitutional order are brought to justice,

Further underlining the importance of stability and good governance for durable social and economic development in Guinea-Bissau,

Reaffirming the need to uphold and respect the sovereignty, unity and territorial integrity of Guinea-Bissau,

Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

Acting under article 41 of Chapter VII of the Charter of the United Nations,

1. *Demands* that the Military Command takes immediate steps to restore and respect constitutional order, including a democratic electoral process, by ensuring that all soldiers return to the barracks, and that members of the “Military Command” relinquish their positions of authority;

2. *Stresses* the need for all national stakeholders and Guinea-Bissau’s international bilateral and multilateral partners to remain committed to the restoration of constitutional order, as affirmed in paragraph 1 above and, in this

context, encourages ECOWAS to continue its mediation efforts aimed at the restoration of constitutional order, in close coordination with the United Nations, the AU and CPLP;

3. *Requests* the Secretary-General to be actively engaged in this process, in order to harmonize the respective positions of international bilateral and multilateral partners, particularly the AU, ECOWAS, CPLP and the EU, and ensure maximum coordination and complementarity of international efforts, with a view to developing a comprehensive integrated strategy with concrete measures aimed at implementing security sector reform, political and economic reforms, combating drug-trafficking and fighting impunity;

Travel ban

4. *Decides* that all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals listed in the annex of this resolution or designated by the Committee established pursuant to paragraph 9 below, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory;

5. *Decides* that the measures imposed by paragraph 4 above shall not apply:

(a) Where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation;

(b) Where entry or transit is necessary for the fulfilment of a judicial process;

(c) Where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Guinea-Bissau and stability in the region;

Designation criteria

6. *Decides* that the measures contained in paragraph 4 shall apply to the individuals designated by the Committee, pursuant to paragraph 9 (b):

(a) Seeking to prevent the restoration of the constitutional order or taking action that undermines stability in Guinea-Bissau, in particular those who played a leading role in the coup d'état of 12 April 2012 and who aim, through their actions, at undermining the rule of law, curtailing the primacy of civilian power and furthering impunity and instability in the country;

(b) Acting for or on behalf of or at the direction of or otherwise supporting or financing individuals identified in subparagraph (a);

7. *Notes* that such means of support or financing include, but are not limited to, the proceeds from organized crime, including the illicit cultivation, production and trafficking of narcotic drugs and their precursors originating in and transiting through Guinea-Bissau;

8. *Strongly encourages* Member States to submit to the Committee names of individuals who meet the criteria set out in paragraph 6 above;

New Sanctions Committee

9. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council (herein “the Committee”), to undertake the following tasks:

- (a) To monitor implementation of the measures imposed in paragraph 4;
- (b) To designate those individuals subject to the measures imposed by paragraph 4 and to consider requests for exemptions in accordance with paragraph 5 above;
- (c) To establish such guidelines as may be necessary to facilitate the implementation of the measures imposed above;
- (d) To report within thirty days to the Security Council on its work for the first report and thereafter to report as deemed necessary by the Committee;
- (e) To encourage a dialogue between the Committee and interested Member States and international, regional and subregional organizations, in particular those in the region, including by inviting representatives of such States or organizations to meet with the Committee to discuss implementation of the measures;
- (f) To seek from all States and international, regional and subregional organizations whatever information it may consider useful regarding the actions taken by them to implement effectively the measures imposed above;
- (g) To examine and take appropriate action on information regarding alleged violations or non-compliance with the measures contained in this resolution;

10. *Calls upon* all Member States to report to the Committee within 120 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraph 4;

11. *Requests* the Secretary-General to submit to the Council an initial report on the implementation of paragraph 1 above within 15 days of the adoption of this resolution, and regular reports, every 90 days thereafter, on the implementation of all its elements, as well as on the humanitarian situation in Guinea-Bissau;

Commitment to review

12. *Affirms* that it shall keep the situation in Guinea-Bissau under continuous review and that it shall be prepared to review the appropriateness of the measures contained in this resolution, including the strengthening through additional measures, such as an embargo on arms and financial measures, modification, suspension or lifting of the measures, as may be needed at any time in light of the progress achieved in the stabilization of the country, the restoration of the constitutional order, in compliance with this resolution;

13. *Decides* to remain actively seized of the matter.

Annex

Travel ban

1. General António INJAI (a.k.a António INDJAI)

Nationality: Guinea-Bissau

Date of birth: 20 January 1955

Place of birth: Encheia, Sector de Bissorá, Região de Oio, Guinea-Bissau

Parentage: Wasna Injai and Quiritché Cofte

Official function: Lieutenant General – Chief of Staff of the Armed Forces

Passport: Diplomatic passport AAID00435

Date of issue: 18.02.2010

Place of issue: Guinea-Bissau

Date of expiry: 18.02.2013

António Injai was personally involved in planning and leading the mutiny of 1 April 2010, culminating with the illegal apprehension of the Prime Minister, Carlo Gomes Junior, and the then Chief of Staff of the Armed Forces, José Zamora Induta; during the 2012 electoral period, in his capacity as Chief of Staff of the Armed Forces, Injai made statements threatening to overthrow the elected authorities and to put an end to the electoral process; António Injai has been involved in the operational planning of the coup d'état of 12 April 2012. In the aftermath of the coup, the first communiqué by the "Military Command" was issued by the Armed Forces General Staff, which is led by General Injai.

2. Major General Mamadu TURE (a.k.a. N'KRUMAH)

Nationality: Guinea-Bissau

Date of birth: 26 April 1947

Official function: Deputy Chief of Staff of the Armed Forces

Passport: Diplomatic passport DA0002186

Date of issue: 30.03.2007

Place of issue: Guinea-Bissau

Date of expiry: 26.08.2013

Member of the "Military Command" which has assumed responsibility for the coup d'état of 12 April 2012.

3. General Estêvão NA MENA

Nationality: Guinea-Bissau

Date of birth: 07 March 1956

Official function: Inspector-General of the Armed Forces

Member of the "Military Command" which has assumed responsibility for the coup d'état of 12 April 2012.

4. Brigadier General Ibraima CAMARÁ (a.k.a. “Papa Camará”)
Nationality: Guinea-Bissau
Date of birth: 11 May 1964
Parentage: Suareba Camará and Sale Queita
Official function: Chief of Staff of the Air Force
Passport: Diplomatic passport AAID00437
Date of issue: 18.02.2010
Place of issue: Guinea-Bissau
Date of expiry: 18.02.2013
Member of the “Military Command” which has assumed responsibility for the coup d’état of 12 April 2012.
 5. Lieutenant colonel Daba NAUALNA (a.k.a. Daba Na Walna)
Nationality: Guinea-Bissau
Date of birth: 6 June 1966
Parentage: Samba Nualna and In-Uasne Nanfafa
Official function: Spokesperson of the “Military Command”
Passport: Passport SA000417
Date of issue: 29.10.2003
Place of issue: Guinea-Bissau
Date of expiry: 10.03.2013
Spokesperson of the “Military Command” which has assumed responsibility for the coup d’état of 12 April 2012.
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**United Nations Sanctions (Guinea-Bissau) Regulation
Information on Guinea-Bissau**

Country Background

Guinea-Bissau is a country in Western Africa, situated between Senegal and Guinea, bordering the North Atlantic Ocean. It has a total area of 36,125 sq. km. and an estimated population of around 1.52 million in 2010. With its capital in Bissau, Guinea-Bissau first achieved independence in 1974. In the aftermath of the military coup in April 2012 that undermined the conclusion of the democratic election process in Guinea-Bissau, an agreement was reached between the Economic Community of West African States (ECOWAS) mediators and the military junta to name Manuel Serifo NHAMADJO as the transitional president since May 2012 with a one year term. Guinea-Bissau had a GDP of US\$817 million (or HK\$6.35 billion) in 2010.¹ Merchandise imports and exports of Guinea-Bissau in 2011 amounted to US\$ 300 million (or HK\$2.34 billion) and US\$ 230 million (or HK\$1.79 billion) respectively.²

United Nations Sanctions against Guinea-Bissau

2. Guinea-Bissau has been beset by military coups, misrule and political instability since it gained independence from Portugal in 1974. The death of the country's president Malam Bacai Sanhá in January 2012 prompted early elections, the first round of which were held on 18 March 2012. Since no candidate received a minimum 50% of the vote in the first round, a runoff between the two leading candidates, former Prime Minister Carlos Gomes Júnior and ex-president Kumba Yala, was scheduled for 22 April 2012. To prevent the second round presidential elections from taking place, some elements of the armed forces in the country seized power and ousted the civilian government on 12 April 2012. Both the interim President, Raimundo Pereira, and Carlos Gomes Júnior were detained during the military coup though they were both released later on intervention by ECOWAS.

3. Deploring the continuing refusal of military leadership in Guinea-Bissau to reinstate legitimate authority in the country, the United Nations Security Council (UNSC) adopted Resolution 2048 on 18 May 2012 to impose a travel ban, with exemptions for humanitarian, judicial or reconciliatory purposes, on Armed Forces Chief of Staff and other members of the so-called "Military Command". In the same resolution, UNSC also demanded that the Guinea-Bissau military leadership take immediate steps to restore and respect constitutional order, including holding

¹ Source: World Statistics Pocket Book published by United Nations Statistics Division at <http://unstats.un.org/unsd/pocketbook/Pocketbook%202011.pdf>

² Source: WTO Statistics Database at <http://stat.wto.org/Home/WSDBHome.aspx?Language>

democratic elections, ensuring that all soldiers return to barracks, and requiring that members of the “Military Command” relinquish their positions of authority.³

Trade Relation between Hong Kong and Guinea-Bissau

4. In 2011, Guinea-Bissau ranked 185th among Hong Kong’s trading partners in the world, with a total trade of HK\$11.3 million. Of these, HK\$11.3 million worth of trade were exports to Guinea-Bissau, and HK\$0.02 million imports. Hong Kong’s trade with Guinea-Bissau are summarised as follows –

| Hong Kong’s Trade with Guinea-Bissau [Value in HK\$ (in million)] | | |
|--|-------------------|----------------------------------|
| Item | 2011 | 2012 (January – July) |
| (a) Total Exports to Guinea-Bissau | 11.3 | 1.7 |
| (i) Domestic exports | 0.0 | 0.0 |
| (ii) Re-exports | 11.3 ⁴ | 1.7 ⁵ |
| (b) Imports from Guinea-Bissau | 0.02 ⁶ | 0.0 |
| Total Trade [(a) + (b)] | 11.3 | 1.7 |

In 2011, HK\$11.2 million worth of goods between Guinea-Bissau and the Mainland were routed through Hong Kong. Nearly all the goods involved were re-exports of Mainland origin to Guinea-Bissau via Hong Kong.

5. The travel ban against Guinea-Bissau imposed by the UNSC would unlikely have any significant effect on the economy of Hong Kong.

Commerce and Economic Development Bureau September 2012

³ Source of information contained in paragraphs 2-3: UN News Centre at <http://www.un.org/apps/news/>

⁴ In 2011, re-exports to Guinea-Bissau include telecommunications equipment (97.2%); plastic articles (2.0%); and parts and accessories of office machines and computers (0.2%).

⁵ In January – July 2012, re-exports to Guinea-Bissau include telecommunications equipment (99.0%).

⁶ In 2011, all imports from Guinea-Bissau are telecommunications equipment (100.0%).