
L.N. 142 of 2012

**United Nations Sanctions (Somalia) (Amendment)
Regulation 2012**

Contents

Section	Page
1. United Nations Sanctions (Somalia) Regulation amended	B6295
2. Section 1 amended (interpretation)	B6295
3. Section 2 amended (prohibition against supply or delivery of certain goods)	B6299
4. Section 3 amended (prohibition against carriage of certain goods)	B6305
5. Section 4 amended (prohibition against provision of certain advice, assistance or training)	B6307
6. Section 4A added	B6309
4A. Prohibition against importation of charcoal	B6309
7. Section 5 amended (prohibition against making available funds, etc.)	B6311
8. Section 6 amended (prohibition against entry or transit by certain persons)	B6315
9. Section 8 amended (licence for supply, delivery or carriage of certain goods)	B6315
10. Section 9 amended (licence for provision of certain advice, assistance or training)	B6319

United Nations Sanctions (Somalia) (Amendment) Regulation 2012

L.N. 142 of 2012

B6293

Section	Page
11. Section 10 amended (licence for making available funds, etc. to certain persons or entities)	B6321
12. Section 13 amended (investigation of suspected ships)	B6323
13. Section 23 amended (power of magistrate or judge to grant warrant)	B6323
14. Section 26 heading amended (liability of person other than principal offender)	B6325

United Nations Sanctions (Somalia) (Amendment) Regulation 2012

(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 14.

2. Section 1 amended (interpretation)

(1) Section 1—

Repeal

“, unless the context otherwise requires”.

(2) Section 1—

Repeal the definition of *relevant entity*

Substitute

“*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;”.

(3) Section 1—

Repeal the definition of *relevant person*

Substitute

“*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, 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;”.

(4) Section 1, definition of *Security Council*—

Repeal

“(安理會)”

Substitute

“(安全理事會)”.

(5) Section 1, Chinese text, definition of 有關連人士, paragraphs (b), (c), (d) and (e)—

Repeal

“任何”.

(6) Section 1, Chinese text, definition of 委員會—

Repeal

“(安理會)”

Substitute

“(安全理事會)”.

(7) Section 1, Chinese text, definition of 《第751號決議》 —

Repeal

“(安理會)”

Substitute

“(安全理事會)”.

- (8) Section 1, Chinese text, definition of 《第1744號決議》 —

Repeal

“安理會”

Substitute

“安全理事會”.

- (9) Section 1, Chinese text, definition of 《第1772號決議》 —

Repeal

“安理會”

Substitute

“安全理事會”.

- (10) Section 1, Chinese text, definition of 《第1844號決議》 —

Repeal

“安理會”

Substitute

“安全理事會”.

- (11) Section 1—

Add in alphabetical order

“*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;”.

3. Section 2 amended (prohibition against supply or delivery of certain goods)

- (1) Section 2, heading—

Repeal

“or delivery”

Substitute

“, sale or transfer”.

(2) Section 2—

Repeal subsection (2)

Substitute

“(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) Section 2—

Repeal subsection (3)

Substitute

“(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) Section 2(5)—

Repeal paragraphs (b) and (c)

Substitute

- “(b) if the person is charged with contravening 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) if the person is charged with contravening 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.”.

4. Section 3 amended (prohibition against carriage of certain goods)

(1) Section 3(2)(c), after “delivery”—

Add

“or transfer”.

(2) Section 3—

Repeal subsection (3)

Substitute

“(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).”.

(3) Section 3(4)(b), after “delivery”—

Add

“or transfer”.

(4) Section 3(5)(b)—

Repeal subparagraph (i)

Substitute

“(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;”.

(5) Section 3(5)(d)—

Repeal subparagraph (i)

Substitute

“(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;”.

(6) Section 3(7)(b)(iii), after “delivery”—

Add

“or transfer”.

(7) Section 3(7)(c)(ii), after “delivery”—

Add

“or transfer”.

5. Section 4 amended (prohibition against provision of certain advice, assistance or training)

(1) Section 4(3)—

Repeal

“delivery”

Substitute

“sale, transfer”.

(2) Section 4—

Repeal subsection (5)

Substitute

“(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) if the person is charged with contravening 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) if the person is charged with contravening 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.”.

6. Section 4A added

After section 4—

Add

“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.”.

7. Section 5 amended (prohibition against making available funds, etc.)

- (1) Section 5, heading, after “etc.”—

Add

“or dealing with funds, etc.”.

- (2) Section 5—

Repeal subsection (2)

Substitute

- “(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 owned by or otherwise belonging to, or held 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 owned by or otherwise belonging to, or held by, the first-mentioned person.”.

- (3) Section 5—

Repeal subsection (3).

(4) Section 5—

Repeal subsection (5)

Substitute

“(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 owned by or otherwise belonging to, or held by, a relevant person or a relevant entity.”.

(5) After section 5(5)—

Add

“(6) A person is not to be regarded as having contravened subsection (2) by reason only of having credited an account owned by or otherwise belonging to, or held 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.”.

8. Section 6 amended (prohibition against entry or transit by certain persons)

Section 6—

Repeal subsection (3)

Substitute

“(3) This section does not apply to a person having the right of abode or the right to land in the HKSAR.”.

9. Section 8 amended (licence for supply, delivery or carriage of certain goods)

(1) Section 8, heading—

Repeal

“delivery”

Substitute

“sale, transfer”.

(2) Section 8—

Repeal subsection (1)

Substitute

- “(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.”.
- (3) Section 8(2)(d)—

Repeal

everything after “5 of Resolution 1772”

Substitute a full stop.

(4) After section 8(2)—

Add

“(3) If the Chief Executive determines that the requirement in subsection (2)(d) 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. Section 9 amended (licence for provision of certain advice, assistance or training)

(1) Section 9(1), after “must”—

Add

“, subject to subsection (3),”.

(2) Section 9(2)(b)—

Repeal

everything after “5 of Resolution 1772”

Substitute a full stop.

(3) After section 9(2)—

Add

“(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.”.

11. Section 10 amended (licence for making available funds, etc. to certain persons or entities)

(1) Section 10, heading, after “**entities**”—

Add

“or dealing with funds, etc. of certain persons or entities”.

(2) Section 10—

Repeal subsection (1)

Substitute

“(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 owned by or otherwise belonging to, or held by, a relevant person or a relevant entity.”.

(3) Section 10(2)—

Repeal paragraph (a)

Substitute

“(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 owned by or otherwise belonging to, or held by, a relevant person or a relevant entity;”.

(4) Section 10(2)(c)(i), English text—

Repeal

“prior to”

Substitute

“before”.

(5) Section 10(3)(a)(ii), before “the notification”—

Add

“receiving”.

12. Section 13 amended (investigation of suspected ships)

Section 13(2)—

Repeal

“that section”

Substitute

“section 3(2) or (4)”.

13. Section 23 amended (power of magistrate or judge to grant warrant)

Section 23(1), English text—

Repeal

“the magistrate or judge is”.

14. Section 26 heading amended (liability of person other than principal offender)

Section 26, English text, heading—

Repeal

“person other than principal offender”

Substitute

“persons other than principal offenders”.

C. Y. LEUNG
Chief Executive

26 September 2012

Explanatory Note

The main purpose of this Regulation is to give effect to a decision in Resolution 2036 (2012) as adopted by the Security Council of the United Nations (***Security Council***) on 22 February 2012. The decision seeks to impose a new sanction against the import of charcoal from Somalia.

2. The United Nations Sanctions (Somalia) Regulation (Cap. 537 sub. leg. AN), as amended by this Regulation, also gives effect to previous Resolutions of the Security Council by providing for the prohibition against—
- (a) the supply, sale, transfer or carriage of weapons or military equipment;
 - (b) the provision of advice, assistance or training in certain circumstances;
 - (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
 - (d) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and
 - (e) entry into or transit through the HKSAR by certain persons.