

**L.N. 5 of 2010**

**UNITED NATIONS SANCTIONS (DEMOCRATIC PEOPLE'S  
REPUBLIC OF KOREA) (AMENDMENT)  
REGULATION 2010**

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**UNITED NATIONS SANCTIONS (DEMOCRATIC PEOPLE'S  
REPUBLIC OF KOREA) (AMENDMENT)  
REGULATION 2010**

(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**

(1) Section 1 of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537 sub. leg. AE) is amended, in the English text, in the definition of "armoured combat vehicle", in paragraph (a), by repealing "infantrymen" and substituting "infantry personnel".

(2) Section 1 is amended by repealing the definitions of "commander" and "ship".

(3) Section 1 is amended, in the definition of "Commissioner", by repealing "the Deputy" and substituting "any Deputy".

(4) Section 1 is amended, in the definition of "Committee", by repealing "pursuant to" and substituting "under".

(5) Section 1 is amended, in the definition of "person connected with the DPRK", by repealing paragraphs (d) and (e) and substituting—

“(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);”.

(6) Section 1 is amended, in the definition of "specified item", by repealing paragraph (a) and substituting—

“(a) all arms or related materiel including any armoured combat vehicle, attack helicopter, battle tank, combat aircraft, large-calibre artillery system, missile and missile launcher, warship, or related materiel (including any spare part);”.

(7) Section 1 is amended, in the definition of "specified item", in paragraph (c), by repealing "or" at the end.

(8) Section 1 is amended, in the definition of “specified item”, by adding—

- “(e) any item, material, equipment, goods or technology set out in the International Atomic Energy Agency document INFCIRC/254/Rev. 9/Part 1a;
- (f) any item, material, equipment, goods or technology set out in the International Atomic Energy Agency document INFCIRC/254/Rev. 7/Part 2a;
- (g) any item, material, equipment, goods or technology set out in the Security Council document S/2009/205;
- (h) graphite designed or specified for use in Electrical Discharge Machining (EDM) machines; or
- (i) para-aramid fibre (Kevlar and other Kevlar-like), filament and tape;”.

(9) Section 1 is amended by adding—

““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;

“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;

“small arms” (小型軍火) means any arms specified in items ML1 and ML2 of the Munitions List in Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G);

“specified arms” (指明軍火) means any arms referred to in paragraph (a) of the definition of “specified item”;

“specified person” (指明人士) means—

(a) a person connected with the DPRK; or

(b) a national of the DPRK who is in a place outside the DPRK;”.

## 2. Cross-heading repealed

The cross-heading immediately before section 2 is repealed.

### 3. Prohibition against supply, delivery or transfer of certain items to DPRK

(1) The heading of section 2 is amended by repealing “**delivery or transfer of certain items to DPRK**” and substituting “**sale or transfer of certain items**”.

(2) Section 2 is amended by adding before subsection (1)—

“(1A) 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.”.

(3) Section 2(1) is repealed and the following substituted—

“(1) Subject to section 3A, 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 item—

(a) to the DPRK;

(b) to, or to the order of, a person connected with the DPRK; or

(c) to a destination or person for the purpose of delivery or transfer, directly or indirectly, to the DPRK or to, or to the order of, a person connected with the DPRK.”.

(4) Section 2(3) is amended by repealing everything before paragraph (a) and substituting—

“(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person did not know and had no reason to believe—”.

(5) Section 2(3)(b) is repealed and the following substituted—

“(b) that the item concerned was or was to be supplied, sold or transferred—

(i) to the DPRK;

(ii) to, or to the order of, a person connected with the DPRK;  
or

(iii) to a destination or person for the purpose of delivery or transfer, directly or indirectly, to the DPRK or to, or to the order of, a person connected with the DPRK.”.

(6) Section 2(4) is repealed.

#### 4. Cross-heading repealed

The cross-heading immediately before section 3 is repealed.

#### 5. Prohibition against carriage of certain items to DPRK

- (1) The heading of section 3 is amended by repealing “**to DPRK**”.
- (2) Section 3(1) is amended by adding—
  - “(aa) a ship that is not registered in the HKSAR and is within the waters of Hong Kong;”.
- (3) Section 3(1) is amended by adding—
  - “(ba) an aircraft that is not registered in the HKSAR and is within Hong Kong air space;”.
- (4) Section 3(2) is amended by repealing everything before paragraph (a) and substituting—
  - “(2) Subject to section 3A, a ship, aircraft or vehicle must not be used for the carriage of any prohibited item if the carriage is, or forms part of, a carriage—”.
- (5) Section 3(2)(c) is amended by adding “or transfer” after “delivery”.
- (6) Section 3 is amended by adding—
  - “(2A) If a ship, aircraft or vehicle is used in contravention of subsection (2), each of the following persons commits an offence—
    - (a) in the case of a ship registered in the HKSAR, the charterer, the operator and the master of the ship;
    - (b) in the case of 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) in the case of an aircraft registered in the HKSAR, the charterer, the operator and the pilot in command of the aircraft;

- (d) in the case of 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) in the case of a vehicle, the operator and the driver of the vehicle.”.

(7) Section 3(3) is amended by repealing everything before paragraph (a) and substituting—

“(3) A person who commits an offence under subsection (2A) is liable—”.

(8) Section 3(4) is amended by repealing everything before paragraph (a) and substituting—

“(4) It is a defence for a person charged with an offence under subsection (2A) to prove that the person did not know and had no reason to believe—”.

(9) Section 3(4)(b) is amended, in the English text, by adding “a” before “carriage—”.

(10) Section 3(4)(b)(iii) is amended by adding “or transfer” after “delivery”.

(11) Section 3(5) is repealed.

## 6. Section 3A added

The following is added immediately after section 3—

### “3A. Exceptions to prohibitions under sections 2 and 3

- (1) Sections 2 and 3 do not apply if—
- (a) the prohibited item is small arms or their related materiel;
- and

(b) the person who intends to perform any act in relation to the prohibited item that, but for this section, would be prohibited under section 2 or 3 notifies the Chief Executive in writing of their intention to perform the act at least 30 days before the day on which the act is intended to be performed.

(2) If the Chief Executive receives a notification under subsection (1)(b), the Chief Executive must cause the Committee to be notified of the act to which the notification relates at least 5 days before the day on which the act is intended to be performed.”.

## 7. **Cross-heading repealed**

The cross-heading immediately before section 4 is repealed.

## 8. **Prohibition against procurement of certain items from DPRK by certain persons**

(1) The heading of section 4 is amended by repealing “**from DPRK**” and substituting “**or services**”.

(2) Section 4 is amended by adding before subsection (1)—

“(1A) 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.”.

(3) Section 4(1) is repealed and the following substituted—

“(1) A person must not procure, agree to procure, directly or indirectly, or do any act likely to promote the procurement of any specified item—

(a) from the DPRK; or

(b) from a person connected with the DPRK.”.

(4) Section 4(3) is amended by repealing everything before paragraph (a) and substituting—

“(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person did not know and had no reason to believe—”.

- (5) Section 4 is amended by adding—
- “(3A) A person must not procure, agree to procure, directly or indirectly, or do any act likely to promote the procurement of any technical training, service, assistance or advice related to the provision, manufacture, maintenance or use of any specified arms—
- (a) from the DPRK; or
  - (b) from a person connected with the DPRK.
- (3B) A person who contravenes subsection (3A) 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.
- (3C) It is a defence for a person charged with an offence under subsection (3B) to prove that the person did not know and had no reason to believe—
- (a) that the technical training, service, assistance or advice concerned related to the provision, manufacture, maintenance or use of any specified arms; or
  - (b) that the technical training, service, assistance or advice concerned was or was to be procured from the DPRK or a person connected with the DPRK.”.

(6) Section 4(4) is repealed.

## **9. Prohibition against procurement of certain items using ships, aircraft or vehicles**

- (1) The heading of section 5 is amended by adding “**or services**” after “**items**”.
- (2) Section 5(1) is amended by adding—
- “(aa) a ship that is not registered in the HKSAR and is within the waters of Hong Kong;”.
- (3) Section 5(1) is amended by adding—
- “(ba) an aircraft that is not registered in the HKSAR and is within Hong Kong air space;”.
- (4) Section 5(2) is repealed and the following substituted—
- “(2) Without limiting section 4, a ship, aircraft or vehicle must not be used for or in connection with the procurement of—

- (a) any specified item—
    - (i) from the DPRK; or
    - (ii) from a person connected with the DPRK; or
  - (b) any technical training, service, assistance or advice related to the provision, manufacture, maintenance or use of any specified arms—
    - (i) from the DPRK; or
    - (ii) from a person connected with the DPRK.”.
- (5) Section 5 is amended by adding—
  - “(2A) If a ship, aircraft or vehicle is used in contravention of subsection (2), each of the following persons commits an offence—
    - (a) in the case of a ship registered in the HKSAR, the charterer, the operator and the master of the ship;
    - (b) in the case of 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) in the case of an aircraft registered in the HKSAR, the charterer, the operator and the pilot in command of the aircraft;
    - (d) in the case of 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) in the case of a vehicle, the operator and the driver of the vehicle.”.

(6) Section 5(3) is amended by repealing everything before paragraph (a) and substituting—

“(3) A person who commits an offence under subsection (2A) is liable—”.

(7) Section 5(4) is repealed and the following substituted—

“(4) It is a defence for a person charged with an offence under subsection (2A) to prove that the person did not know and had no reason to believe—

(a) that the item concerned was a specified item;

(b) that the item concerned was—

(i) from the DPRK; or

(ii) from a person connected with the DPRK;

(c) that the technical training, service, assistance or advice concerned related to the provision, manufacture, maintenance or use of any specified arms; or

(d) that the technical training, service, assistance or advice concerned was or was to be procured from the DPRK or a person connected with the DPRK.”.

(8) Section 5(5) is repealed.

## 10. Sections 5A and 5B added

The following are added immediately after section 5—

### “5A. Prohibition against engaging in certain financial transactions

(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) Subject to section 5B, a person must not engage, directly or indirectly, in any financial transaction related to the provision, manufacture, maintenance or use of any specified arms the supply, sale, transfer or carriage of which is prohibited under section 2 or 3.

(3) A person must not engage, directly or indirectly, in any financial transaction related to the provision, manufacture, maintenance or use of any specified arms the procurement of which is prohibited under section 4.

(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 financial transaction concerned related to the provision, manufacture, maintenance or use of any specified arms;
- (b) that the supply, sale, transfer or carriage of the arms concerned was prohibited under section 2 or 3; or
- (c) that the procurement of the arms concerned was prohibited under section 4.

#### **5B. Exception to prohibition under section 5A(2)**

(1) Section 5A(2) does not apply if—

- (a) the specified arms is small arms or their related materiel; and
- (b) the person who intends to perform any act in relation to the specified arms that, but for this section, would be prohibited under section 5A(2) notifies the Chief Executive in writing of their intention to perform the act at least 30 days before the day on which the act is intended to be performed.

(2) If the Chief Executive receives a notification under subsection (1)(b), the Chief Executive must cause the Committee to be notified of the act to which the notification relates at least 5 days before the day on which the act is intended to be performed.”.

#### **11. Cross-heading repealed**

The cross-heading immediately before section 6 is repealed.

#### **12. Prohibition against provision of certain training, services, assistance or advice to certain persons**

(1) The heading of section 6 is amended by repealing “**certain training, services, assistance or advice**” and substituting “**technical training, services, etc.**”.

(2) Section 6 is amended by adding before subsection (1)—

“(1A) 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.”.

(3) Section 6(1) is amended by repealing “A person shall not provide” and substituting “Subject to section 6A, a person must not provide, directly or indirectly,”.

(4) Section 6(3) is repealed and the following substituted—

“(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person did not know and had no reason to believe—

- (a) that the technical training, service, assistance or advice concerned related to the provision, manufacture, maintenance or use of any specified item; or
- (b) that the technical training, service, assistance or advice concerned was or was to be provided to a person connected with the DPRK.”.

(5) Section 6(4) is repealed.

### 13. Section 6A added

The following is added—

#### “6A. Exception to prohibition under section 6

(1) Section 6 does not apply if—

- (a) the specified item is small arms or their related materiel; and
- (b) the person who intends to perform any act in relation to the specified item that, but for this section, would be prohibited under section 6 notifies the Chief Executive in writing of their intention to perform the act at least 30 days before the day on which the act is intended to be performed.

(2) If the Chief Executive receives a notification under subsection (1)(b), the Chief Executive must cause the Committee to be notified of the act to which the notification relates at least 5 days before the day on which the act is intended to be performed.”.

**14. Prohibition against acceptance of certain training, services, assistance or advice provided by certain persons**

(1) The heading of section 7 is amended by repealing “**certain training, services, assistance or advice**” and substituting “**technical training, services, etc.**”.

(2) Section 7 is amended by adding before subsection (1)—

“(1A) 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.”.

(3) Section 7(1) is repealed and the following substituted—

“(1) A person must not accept, directly or indirectly, any technical training, service, assistance or advice that is provided by a specified person and related to the provision, manufacture, maintenance or use of any specified item.”.

(4) Section 7(3) is repealed and the following substituted—

“(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person did not know and had no reason to believe—

(a) that the technical training, service, assistance or advice concerned related to the provision, manufacture, maintenance or use of any specified item; or

(b) that the technical training, service, assistance or advice concerned was or was to be provided by a specified person.”.

(5) Section 7(4) and (5) is repealed.

**15. Cross-heading repealed**

The cross-heading immediately before section 8 is repealed.

**16. Prohibition against making available funds, etc. to certain persons or entities**

(1) The heading of section 8 is amended by repealing “**to certain persons or entities**” and substituting “**or dealing with funds, etc.**”.

(2) Section 8 is amended by adding before subsection (1)—

- “(1A) 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.”.
- (3) Section 8(1) is repealed and the following substituted—
- “(1) Except under the authority of a licence—
- (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 (including a relevant person and a relevant entity) must not deal with, directly or indirectly, any funds or other financial assets or economic resources belonging to, owned or held by a relevant person or a relevant entity.”.
- (4) Section 8(3) is repealed and the following substituted—
- “(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person did not know and had no reason to believe that—
- (a) 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) the person was dealing with funds or other financial assets or economic resources belonging to, owned or held by a relevant person or a relevant entity.”.
- (5) Section 8(4) is repealed.
- (6) Section 8 is amended by adding—
- “(5) A person is not to be regarded as having contravened subsection (1) by reason only of having credited an account belonging to, owned 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 prior to the date on which the person or entity became a relevant person or a relevant entity.
- (6) 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.”.

### **17. Cross-heading repealed**

The cross-heading immediately before section 9 is repealed.

### **18. Prohibition against entry or transit by certain persons**

- (1) Section 9(1) is repealed and the following substituted—  
“(1) Subject to section 10, a person designated by the Committee or the Security Council under paragraph 8(e) of Resolution 1718 must not enter or transit through the HKSAR.”.
- (2) Section 9(3) is repealed and the following substituted—  
“(3) This section does not apply to a person having the right of abode or the right to land in the HKSAR.”.
- (3) Section 9(4) is repealed.

### **19. Section 10 substituted**

Section 10 is repealed and the following substituted—

#### **“10. Exceptions to prohibition against entry or transit by certain persons**

Section 9 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 Resolution 1718.”.

**20. Sections 10A and 10B added**

The following are added immediately after section 10—

**“10A. Prohibition against provision of certain services to ships registered in DPRK**

(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) Subject to section 10B, a person must not provide, directly or indirectly, any specified services to a ship registered in the DPRK if the person knows or has reasonable grounds to believe that the ship is carrying a prohibited item.

(3) 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.

(4) In this section, “specified services” (指明服務), in relation to a ship, means the provision of any bunkering service to the ship or any of the following services—

(a) the provision of fuel to the ship;

(b) the provision of tools or equipment for shipboard maintenance;

(c) the provision of lubricants, chemicals, expendable parts, spare parts, supplies or any other requirements that are necessary for the safe operation of the ship;

(d) the servicing or repair of any part of the ship or any item referred to in paragraphs (b) and (c).

**10B. Exception to prohibition under section 10A**

Section 10A does not apply if the provision of the specified services concerned is necessary for humanitarian purposes.”.

**21. Licence for making available funds, etc.  
to certain persons or entities**

(1) The heading of section 11 is amended by adding “**or dealing with funds, etc. of certain persons or entities**” after “**entities**”.

(2) Section 11(1) and (2) is repealed and the following substituted—

“(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 (4), 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, owned or held by a relevant person or a relevant entity.

(2) The requirements referred to in subsection (1) 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, owned or held 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 prior to 14 October 2006 and is not for the benefit of a relevant person or a relevant entity or an individual or entity identified by the Committee or the Security Council; and
  - (ii) are to be used to satisfy the lien or judgment.”.

- (3) Section 11(3) is repealed.
- (4) Section 11 is amended by adding—
- “(4) 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 5 working days of 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.”.

## **22. Provision of false information or documents for purpose of obtaining licences**

(1) Section 12(1) is amended by repealing everything before paragraph (a) and substituting—

“(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—”.

(2) Section 12(2) is amended by repealing everything before paragraph (a) and substituting—

“(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—”.

## **23. Licence or permission granted by authorities of places outside HKSAR**

(1) Section 13(1) is repealed and the following substituted—

“(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) Section 13(2) is amended by adding “by the person” after “done”.

## **24. Part 5 substituted**

Part 5 is repealed and the following substituted—

### **“PART 5**

#### **ENFORCEMENT OF REGULATION**

#### **Division 1—Investigation, etc. of Suspected Ships**

### **14. Investigation of suspected ships**

(1) If an authorized officer has reason to suspect that a ship to which section 3 or 5 applies has been, is being or is about to be used in contravention of section 3(2) or 5(2), 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 or 5 applies is being or is about to be used in contravention of section 3(2) or 5(2), the officer may, for the purpose of stopping or preventing the use of the ship in contravention of section 3(2) or 5(2) 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.

## **15. Offences by charterer, operator or master of ship**

(1) A charterer, operator or master of a ship who disobeys any direction given under section 14(2)(a), or, without reasonable excuse, refuses or fails to comply with a request made under section 14(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 14(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.

#### **16. Power of authorized officers to enter and detain ships**

(1) Without limiting section 15, if an authorized officer has reason to suspect that a request that has been made under section 14(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**

#### **17. Investigation of suspected aircraft**

(1) If an authorized officer has reason to suspect that an aircraft to which section 3 or 5 applies has been, is being or is about to be used in contravention of section 3(2) or 5(2), 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.

#### **18. 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 17(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 17(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.

#### **19. Power of authorized officers to enter and detain aircraft**

(1) Without limiting section 18, if an authorized officer has reason to suspect that a request that has been made under section 17(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**

#### **20. 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 5(2), 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.

## **21. 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 20(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 20(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.

## **22. Power of authorized officers to enter and detain vehicles**

(1) Without limiting section 21, if an authorized officer has reason to suspect that a request that has been made under section 20(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

### 23. Production of proof of identity

Before or on exercising a power conferred by section 14, 16, 17, 19, 20 or 22, an authorized officer must, if requested by any person so to do, produce proof of the officer's identity to the person for inspection."

### 25. Power of magistrate or judge to grant warrant

(1) Section 24(1) is amended, in the English text, by repealing "he is".

(2) Section 24(3)(a), (b) and (c) is repealed and the following substituted—

"(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."

(3) Section 24(5) is amended by repealing "he may use such force as" and substituting "the person may use any force that".

### 26. Sections 24A and 24B added

The following are added—

#### "24A. Seized articles, etc. liable to forfeiture

(1) If an authorized officer intends to apply to a magistrate or judge under section 24B for an order for forfeiture of any document, cargo or article seized under section 24(3), the officer must, within 30 days from the date of the seizure, serve notice of that intention on every person who was, to the knowledge of the officer at the time of, or immediately after, the seizure, an owner of the document, cargo or article.

(2) A notice under subsection (1) is to be regarded as having been duly served on a person if—

(a) it is delivered personally to the person;

- (b) it is sent by registered post addressed to the person at any place of residence or business of the person known to the authorized officer; or
- (c) where the notice cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the offices of the Customs and Excise Department, in a place to which the public have access, for a period of not less than 7 days commencing within 30 days from the date of the seizure of the document, cargo or article.

(3) An owner, or the authorized agent of an owner, of the document, cargo or article referred to in a notice served under subsection (1), or a person who was in possession of the document, cargo or article at the time of seizure, or a person who has a legal or equitable interest in the document, cargo or article, may object to the proposed forfeiture by serving a notice in writing on the Commissioner.

(4) A notice of objection under subsection (3)—

- (a) must be served on the Commissioner by a person referred to in subsection (3) (“claimant”) within 30 days from—
  - (i) if the notice under subsection (1) is delivered personally to the person named in the notice, the date of delivery;
  - (ii) if the notice under subsection (1) is sent by registered post, 2 days after the date of posting; or
  - (iii) if the notice under subsection (1) is exhibited as described in subsection (2)(c), the first day it is so exhibited;
- (b) must state the claimant’s full name and address for service in Hong Kong; and
- (c) if the claimant does not have a permanent address in Hong Kong, must state the name and address of a solicitor who is qualified to practise under the Legal Practitioners Ordinance (Cap. 159) and is authorized to accept service on behalf of the claimant in relation to any forfeiture proceedings.

(5) An authorized officer may apply to a magistrate or judge for an order for forfeiture of any seized document, cargo or article in respect of which a notice has been served under subsection (1)—

- (a) after the expiration of the appropriate period of time specified in subsection (4)(a) for the serving of a notice of objection; or
- (b) if a notice of objection is served in accordance with subsections (3) and (4), after the receipt of the notice.

**24B. Power of magistrate or judge to make order for forfeiture and disposal**

(1) If an application is made to a magistrate or judge for an order for forfeiture of any seized document, cargo or article, the magistrate or judge may, if satisfied that the seized document is a document relating to the provision, manufacture, maintenance or use of a prohibited item, or that the seized cargo or article is a prohibited item, make such order as the magistrate or judge thinks fit for the forfeiture of the document, cargo or article and its subsequent destruction or disposal.

(2) An order under subsection (1) may be made in respect of any seized document, cargo or article whether or not any person has been convicted of any offence in connection with the document, cargo or article.

(3) Before making an order for forfeiture of any seized document, cargo or article, a magistrate or judge must issue a summons to any person who serves a notice of objection in accordance with section 24A(3) and (4) to appear on a day specified in the summons to show cause why the document, cargo or article should not be forfeited.

(4) If any summons issued under subsection (3) has not for any reason been served and the magistrate or judge is satisfied that all reasonable efforts have been made to serve the summons on the person named in the summons, the magistrate or judge may make an order for forfeiture under this section despite the fact that the summons has not been served on that person.”.

**27. Section 25 substituted**

Section 25 is repealed and the following substituted—

**“25. Detention of documents, cargoes or articles seized**

(1) Subject to subsection (2) and any order made under section 24B, any document, cargo or article seized under section 24(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.”.

## 28. Disclosure of information or documents

(1) Section 26(1) is amended by repealing “in pursuance of” and substituting “under”.

(2) Section 26(1)(a) is amended, in the English text, by repealing “the person from” and substituting “from”.

(3) Section 26(1)(c) is repealed and the following substituted—

“(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 the DPRK decided on by the Security Council; or”.

(4) Section 26(2)(a) and (b), in the English text, is repealed and the following substituted—

“(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.”.

## 29. Liability of person other than principal offender

(1) The heading of section 27 is amended, in the English text, by repealing “**person other than principal offender**” and substituting “**persons other than principal offenders**”.

(2) Section 27(1) and (2) is amended, in the English text, by repealing “Where” and substituting “If”.

## 30. Offences in relation to obstruction of authorized persons, etc.

(1) The heading of section 28 is amended, in the Chinese text, by repealing “人士” and substituting “的人”.

(2) Section 28 is amended by repealing “his powers” and substituting “the powers of that other person”.

### **31. Offences in relation to evasion of this Regulation**

Section 29 is amended by adding “, cargo” after “document”.

### **32. Proceedings to be instituted**

(1) The heading of section 30 is repealed and the following substituted—  
“**Consent and time limit for proceedings**”.

(2) Section 30(2) is amended by repealing “, being an offence alleged to have been committed outside the HKSAR,” and substituting “that is alleged to have been committed outside the HKSAR”.

### **33. Section 31 substituted**

Section 31 is repealed and the following substituted—

#### **“31. 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 or the Security Council under paragraph 8(d) of Resolution 1718.”.

### **34. Access to Security Council document S/2006/814, etc.**

(1) Section 32 is amended, in the English text, by adding “or her” after “his”.

(2) Section 32(d) is amended by repealing the full stop at the end and substituting a semicolon.

(3) Section 32 is amended by adding—

“(e) the International Atomic Energy Agency document INFCIRC/254/Rev. 9/Part 1a;

(f) the International Atomic Energy Agency document INFCIRC/254/Rev. 7/Part 2a;

(g) the Security Council document S/2009/205.”.

**35. Section 33 substituted**

Section 33 is repealed and the following substituted—

**“33. 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.”.

Donald TSANG  
Chief Executive

12 January 2010

**Explanatory Note**

This Regulation amends the United Nations Sanctions (Democratic People’s Republic of Korea) Regulation (Cap. 537 sub. leg. AE) (“principal Regulation”) to give effect to certain decisions of the Security Council of the United Nations (“Security Council”) in Resolution 1874 (2009) as adopted by the Security Council on 12 June 2009 by—

- (a) amending the definition of “specified item” in section 1 of the principal Regulation to cover additional items;
- (b) extending the prohibition against the procurement of certain items from the Democratic People’s Republic of Korea (“DPRK”) to any technical training, service, assistance or advice related to the provision, manufacture, maintenance or use of any specified arms;
- (c) providing for the prohibition against engaging in any financial transaction related to the provision, manufacture, maintenance or use of any specified arms the supply or procurement of which is prohibited under the principal Regulation as amended by this Regulation; and

(d) providing for the prohibition against the provision of certain services to ships registered in the DPRK under certain circumstances.

2. This Regulation also amends the definition of “specified item” in section 1 of the principal Regulation to cover additional items set out in the Security Council document S/2009/205 and goods specified in the Security Council document S/2009/364.