United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2012

The United Nations Sanctions (Libya) Regulation 2011 (Cap. 537 sub. leg. AW) is amended as set out in sections 2 to 9.

2. Section 1 amended (interpretation)

   (1) Section 1—
   
   Repeal the definition of licence
   Substitute
   “licence (特許) means a licence granted under section 13(1)(a) or (b), 14(1) or 15(1) or (1A);”.

   (2) Section 1, English text, definition of Security Council—
   Repeal the full stop
   Substitute a semicolon.

   (3) Section 1—
   Repeal the definition of Libya.
(4) Section 1—

Add in alphabetical order

"designated Libyan entity" means—

(a) the Libyan Investment Authority; or

(b) the Libyan Africa Investment Portfolio;

small arms 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)."

3. Section 7 amended (prohibition against making available funds, etc. or dealing with funds, etc.)

(1) Section 7(2)(b), Chinese text, after “包括”—

Add

“由”.

(2) After section 7(2)—

Add

“(2A) Except under the authority of a licence granted under section 15(1A)—

(a) a person must not make available, directly or indirectly, any designated funds to, or for the benefit of, a designated Libyan entity; and

(b) a person must not deal with, directly or indirectly, any designated funds, and if the person is a designated Libyan entity, including any funds and other financial assets or economic resources owned by or otherwise belonging to, or held by, the person and which were frozen on 16 September 2011.”.
(3) Section 7—

**Repeal subsections (3) and (4)**

**Substitute**

“(3) A person who contravenes subsection (2) or (2A) 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) 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—

(a) if the person is charged with contravening subsection (2)—

(i) 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

(ii) 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; or

(b) if the person is charged with contravening subsection (2A)—

(i) that the designated funds were or were to be made available to, or for the benefit of, a designated Libyan entity; or

(ii) that the funds or other financial assets or economic resources concerned were designated funds.”.
(4) Section 7(6), English text, definition of deal with, paragraph (b)—

Repeal the full stop
Substitute a semicolon.

(5) Section 7(6)—

Add in alphabetical order

“designated funds (指認資金) means any funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, a designated Libyan entity and which were frozen on 16 September 2011.”.

4. Sections 10 and 12 repealed

Sections 10 and 12—

Repeal the sections.

5. Section 13 amended (licence for supply, sale, transfer or carriage of certain goods)

(1) Section 13(1), after “the Chief Executive must”—

Add

“, subject to subsection (3),”.

(2) Section 13—

Repeal subsection (2)

Substitute

“(2) The requirements referred to in subsection (1) are as follows—

(a) the prohibited goods are non-lethal military equipment intended solely for humanitarian or protective use, as approved in advance by the Committee;
(b) the prohibited goods are protective clothing, including flak jackets and military helmets, to be temporarily exported to Libya by the personnel of the United Nations, representatives of the media, humanitarian or development workers or associated personnel, for their personal use only;

(c) the supply or sale of the prohibited goods is approved in advance by the Committee;

(d) the prohibited goods are to be supplied, sold or transferred to the Libyan authorities and intended solely for security or disarmament assistance;

(e) the prohibited goods are small arms or related materiel to be temporarily exported to Libya for the sole use of the personnel of the United Nations, representatives of the media, humanitarian or development workers or associated personnel.

(3) If the Chief Executive determines that the requirement in subsection (2)(d) or (e) 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 the notification.”.

6. **Section 14 substituted**

Section 14—

Repeal the section

Substitute
14. Licence for provision of certain assistance or training

(1) If satisfied on application that any of the requirements in subsection (2) is met, the Chief Executive must, subject to subsection (3), grant a licence to provide to a person connected with Libya technical assistance, training, financial or other assistance, related to military activities or to the provision, maintenance or use of any prohibited goods, including the provision of armed mercenary personnel.

(2) The requirements referred to in subsection (1) are as follows—

(a) the assistance or training is related to the supply of non-lethal military equipment intended solely for humanitarian or protective use, as approved in advance by the Committee;

(b) the assistance or training is related to protective clothing, including flak jackets and military helmets, to be temporarily exported to Libya by the personnel of the United Nations, representatives of the media, humanitarian or development workers or associated personnel, for their personal use only;

(c) the assistance or provision of personnel is approved in advance by the Committee;

(d) the assistance or training is to be provided to the Libyan authorities and intended solely for security or disarmament assistance.

(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 the notification.”.

7. **Section 15 amended (licence for making available funds, etc. to certain persons or entities or dealing with funds, etc. of certain persons or entities)**

(1) After section 15(1)—

**Add**

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

(a) making available designated funds to, or for the benefit of, a designated Libyan entity; or

(b) dealing with designated funds.”.

(2) After section 15(2)—

**Add**

“(2A) The requirements referred to in subsection (1A) are as follows—

(a) the designated funds 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 under the law of the HKSAR; or
(iii) fees or service charges, under the law of the HKSAR, for the routine holding or maintenance of the designated funds;

(b) the designated funds are necessary for extraordinary expenses;

(c) the designated funds—

(i) are the subject of a judicial, administrative or arbitral lien or judgment that was entered before 26 February 2011 and is not for the benefit of a relevant person or a relevant entity; and

(ii) are to be used to satisfy the lien or judgment;

(d) the designated funds are to be used for making payment due under a contract entered into by a designated Libyan entity, and the payment is not received, directly or indirectly, by a relevant person or a relevant entity;

(e) the designated funds—

(i) are to be used for one or more of the following purposes—

(A) humanitarian needs;

(B) fuel, electricity and water for strictly civilian uses;

(C) resuming Libyan production and sale of hydrocarbons;

(D) establishing, operating or strengthening institutions of civilian government and civilian public infrastructure;

(E) facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya; and
(ii) are not to be made available to, or for the benefit of, a relevant person or a relevant entity.”.

(3) Section 15—

Repeal subsection (3)

Substitute

“(3) If the Chief Executive determines that—

(a) the requirement in subsection (2)(a) or (2A)(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) or (2A)(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) or (2A)(c) is met, before granting the licence, the Chief Executive must cause the Committee to be notified of the determination;

(d) the requirement in subsection (2)(d) or (2A)(d) is met, the Chief Executive must cause the Committee to be notified of the determination 10 working days before granting the licence;

(e) the requirement in subsection (2A)(e) is met—
(i) the Chief Executive must cause the Libyan authorities to be consulted about the intended use of the designated funds;

(ii) if the Libyan authorities have no objection to the intended use of the designated funds, the Chief Executive must cause the Committee and the Libyan authorities to be notified of the intention to grant a licence under subsection (1A); and

(iii) the Chief Executive must grant the licence in the absence of a negative decision by the Committee and an objection from the Libyan authorities within 5 working days of the notification.

(4) In this section—

*designated funds* (指認資金) has the meaning given by section 7.”.

8. **Section 16 repealed (licence for flights into Libya)**

Section 16—

Repeal the section.

9. **Section 22 amended (investigation of suspected aircraft)**

Section 22—

Repeal subsection (1)

Substitute

“(1) If an authorized officer has reason to suspect that an aircraft to which section 3, 6 or 11 applies has been, is being or is about to be used in contravention of section 3(2), 6(2) or 11(3), the officer may—
Section 9

(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;

(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; and

(c) (in the case that an authorized officer has reason to suspect that the aircraft carries armed mercenary personnel) request the charterer, operator or pilot in command of the aircraft to provide any information relating to any person on board the aircraft.”.

Donald TSANG
Chief Executive

14 March 2012
Explanatory Note

The purpose of this Regulation is to give effect to certain decisions in Resolution 2009 (2011) and Resolution 2016 (2011), as adopted by the Security Council of the United Nations on 16 September 2011 and 27 October 2011 respectively, by—

(a) providing for further exceptions to the prohibition against—

(i) the supply, sale, transfer or carriage of arms or related materiel to Libya;

(ii) the provision of assistance or training related to military activities, etc. in certain circumstances;

(iii) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources; and

(iv) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and

(b) uplifting the prohibition against—

(i) HKSAR aircraft flying into Libya; and

(ii) Libyan aircraft to take off from or land in the HKSAR, or fly within the HKSAR air space.