

**L.N. 150 of 2017**

**United Nations Sanctions (South Sudan) Regulation 2017**

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## United Nations Sanctions (South Sudan) Regulation 2017

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

### Part 1

#### Preliminary

##### 1. Interpretation

In this Regulation—

*authorized officer* (獲授權人員) means—

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

*Committee* (委員會) means the Committee of the Security Council established under paragraph 16 of Resolution 2206;

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

*funds* (資金) includes—

- (a) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments;

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

**licence** (特許) means a licence granted under section 5(1);

**relevant entity** (有關實體) means—

- (a) an entity specified by the Chief Executive as a relevant entity under section 15;
- (b) an entity acting on behalf of, or at the direction of, a person or entity specified by the Chief Executive as a relevant person or relevant entity under section 15; or
- (c) an entity owned or controlled by a person or entity acting on behalf of, or at the direction of, a person or entity specified by the Chief Executive as a relevant person or relevant entity under section 15;

**relevant person** (有關人士) means—

- (a) a person specified by the Chief Executive as a relevant person under section 15; or

- (b) a person acting on behalf of, or at the direction of, a person or entity specified by the Chief Executive as a relevant person or relevant entity under section 15;

**Resolution 2206** (《第2206號決議》) means Resolution 2206 (2015) adopted by the Security Council on 3 March 2015;

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

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## Part 2

### Prohibitions

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

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- (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) that the funds or other financial assets or economic resources concerned were, or were to be, made available to, or for the benefit of, a relevant person or a relevant entity; or
- (b) that the person was dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, a relevant person or a relevant entity.
- (5) A person is not to be regarded as having contravened subsection (2) by reason only of having credited an account belonging to, or owned or controlled by, a relevant person or a relevant entity with—
- (a) interest or other earnings due on that account; or
- (b) payment due under contracts, agreements or obligations that arose before the date on which the person or entity became a relevant person or a relevant entity.
- (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.

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

- (1) Subject to section 4, 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 person designated by the Committee for the purposes of paragraph 9 of Resolution 2206.

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

Section 3 does not apply to a case in respect of which—

- (a) the Committee has determined that the relevant entry or transit 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 or transit would further the objectives of peace and national reconciliation in South Sudan and stability in the region.
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## Part 3

### Licence

- 5. Licence for making available funds, etc. to certain persons or entities or dealing with funds, etc. of certain persons or entities**
- (1) If on application the Chief Executive determines that any of the requirements in subsection (2) is met, the Chief Executive must, subject to subsection (3), grant, as appropriate, a licence for—
- (a) making available funds or other financial assets or economic resources to, or for the benefit of, a relevant person or a relevant entity; or
  - (b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, a relevant person or a relevant entity.
- (2) The requirements are as follows—
- (a) the funds or other financial assets or economic resources are—
    - (i) necessary for basic expenses, including payment for foodstuffs, rents, mortgages, medicines, medical treatments, taxes, insurance premiums and public utility charges;
    - (ii) exclusively for the payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services 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 funds or other financial assets or economic resources belonging to, or owned

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- or controlled by, a relevant person or a relevant entity;
- (b) the funds or other financial assets or economic resources are necessary for extraordinary expenses;
  - (c) the funds or other financial assets or economic resources—
    - (i) are the subject of a judicial, administrative or arbitral lien or judgment that was entered before 3 March 2015 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 funds or other financial assets or economic resources are to be used for making payment due under a contract entered into by a person or entity before the date on which the person or entity became a relevant person or a relevant entity, and the payment is not received, directly or indirectly, by a relevant person or a relevant entity.
- (3) If the Chief Executive determines that—
- (a) the requirement in subsection (2)(a) is met, the Chief Executive—
    - (i) must cause the Committee to be notified of the intention to grant a licence under subsection (1); and
    - (ii) must grant the licence in the absence of a negative decision by the Committee within 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;
- (d) the requirement in subsection (2)(d) is met, the Chief Executive must cause the Committee to be notified of the determination 10 working days before granting the licence.

**6. Provision of false information or documents for purpose of obtaining licence**

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

### **Things Done outside HKSAR**

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

### **Evidence**

#### **8. Power of magistrate or judge to grant warrant**

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

- (b) seize and detain any document, cargo or article found on the premises, ship, aircraft or vehicle or on any person referred to in paragraph (a) that the authorized person has reasonable grounds to believe to be evidence in relation to the commission of an offence under this Regulation;
  - (c) take in relation to any document, cargo or article seized under paragraph (b) any other steps that may appear necessary for preserving the document, cargo or article and preventing interference with it.
- (4) A person may only be searched under this section by a person who is of the same sex.
  - (5) If a person is empowered under this section to enter any premises, ship, aircraft or vehicle, the person may use any force that is reasonably necessary for that purpose.

**9. Detention of documents, cargoes or articles seized**

- (1) Subject to subsection (2), any document, cargo or article seized under section 8(3) may not be detained for more than 3 months.
  - (2) If the document, cargo or article is relevant to an offence under this Regulation, and proceedings for the offence have begun, the document, cargo or article may be detained until the completion of those proceedings.
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## Part 6

### Disclosure of Information or Documents

#### 10. Disclosure of information or documents

- (1) Any information or document provided, produced or seized under this Regulation may be disclosed only if—
  - (a) the person who provided or produced the information or document or from whom the document was seized has given consent to the disclosure;
  - (b) the information or document is disclosed to a person who would have been empowered under this Regulation to request that it be provided or produced;
  - (c) the information or document is disclosed on the authority of the Chief Executive, subject to the information or document being transmitted through and with the approval of the instructing authority, to—
    - (i) any organ of the United Nations;
    - (ii) any person in the service of the United Nations; or
    - (iii) the Government of any place outside the People's Republic of China,  
for the purpose of assisting the United Nations or that Government in securing compliance with, or detecting evasion of, measures in relation to South Sudan decided on by the Security Council; or
  - (d) the information or document is disclosed with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Regulation.

- (2) For the purposes of subsection (1)(a)—
- (a) a person may not give consent to the disclosure if the person has obtained the information or possessed the document only in the person's capacity as servant or agent of another person; and
  - (b) a person may give consent to the disclosure if the person is entitled to the information or to the possession of the document in the person's own right.
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## Part 7

### Other Offences and Miscellaneous Matters

#### 11. Liability of persons other than principal offenders

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

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

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

#### 13. Offences in relation to evasion of this Regulation

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

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

**14. Consent and time limit for proceedings**

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

**15. Specification of relevant person or relevant entity by Chief Executive**

The Chief Executive may, by notice published in the Gazette, specify as a relevant person or a relevant entity a person or an entity designated by the Committee for the purposes of paragraph 12 of Resolution 2206.

**16. 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.

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- (3) A delegation or authorization under subsection (1) or (2) may be subject to any restrictions or conditions that the Chief Executive thinks fit.
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## **Part 8**

### **Duration**

**17. Duration**

This Regulation expires at midnight on 31 May 2018.

Carrie LAM  
Chief Executive

13 September 2017

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### **Explanatory Note**

The purpose of this Regulation is to give effect to certain decisions in Resolution 2353 (2017) as adopted by the Security Council of the United Nations on 24 May 2017 by providing for the prohibition against—

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (c) entry into or transit through the HKSAR by certain persons.