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UNITED NATIONS SANCTIONS (AFGHANISTAN) REGULATION

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UNITED NATIONS SANCTIONS (AFGHANISTAN) REGULATION

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

1. Interpretation

- In this Regulation, unless the context otherwise requires—
- “authorized officer” (獲授權人員) means a person authorized in writing by the Chief Executive for the purposes of this Regulation;
 - “commander” (機長), in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator of the aircraft or, failing such a person, the person who is for the time being the pilot in command of the aircraft;
 - “Committee” (委員會) means the Committee of the Security Council of the United Nations established pursuant to Resolution 1267;
 - “customs officer” (海關人員) means any member of the Customs and Excise Service holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342);
 - “gold” (黃金) means gold coin or gold bullion;
 - “make any payment” (作出任何付款) means make payment by any method, including but not restricted to the grant, or any agreement to the exercise, of any right to set off, accord and satisfaction and adjustment of any account and any other similar means;
 - “operator” (營運人), in relation to an aircraft, means the person for the time being having the management of the aircraft;
 - “Resolution 1267” (《第 1267 號決議》) means Resolution 1267 adopted by the Security Council of the United Nations on 15 October 1999;
 - “securities” (證券) include—
 - (a) shares, stocks, bonds, notes, debentures and debenture stocks;
 - (b) a deposit receipt in respect of the deposit of securities;
 - (c) a negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money;
 - (d) a promissory note;
 - (e) a unit or a sub-unit of a unit trust;
 - (f) an annuity or a life insurance policy or other contract entered into with an insurance company for securing a payment in the future of any capital sum or of an annuity;

(g) a warrant conferring an option to acquire securities;

(h) a share in an oil royalty;

“ship” (船舶) includes every description of vessel used in navigation not propelled by oars;

“Taliban” (塔利班) means the Afghan faction known as the Taliban, also known as the Islamic Emirate of Afghanistan;

“Taliban undertaking” (塔利班企業) means any entity, wherever incorporated or constituted, owned or controlled directly or indirectly by the Taliban;

“vehicle” (載具) means land transport vehicle.

2. Prohibition of flights

(1) Notwithstanding any licence, operating permit or permit granted under regulation 5, 20A or 23 of the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg.), an aircraft, wherever registered, shall not take off from or land in the HKSAR if—

(a) the aircraft is owned, leased or operated by or on behalf of the Taliban, as designated by the Committee in accordance with Resolution 1267; and

(b) the designation is published in the Gazette by the authority of the Chief Executive,

except with the permission in writing of the Chief Executive.

(2) Where an aircraft is used in contravention of subsection (1), the operator and the commander of the aircraft shall be guilty of an offence.

3. Freezing of fund and financial resources

(1) Except with the permission in writing of the Chief Executive, no person shall—

(a) make any payment or dispose of any gold, securities or investments; or

(b) make any change in the persons to whose credit any sum is to stand or to whose order any gold, securities or investments are to be held,

where any such action is an action to which this section applies.

(2) This section applies to any action that is likely to make available directly or indirectly, or otherwise to result in the remittance or transfer of, to or for the benefit of the Taliban or any Taliban undertaking, any funds or other financial resources, whether by their removal from the HKSAR or otherwise.

(3) The provisions of this section shall apply to any funds or other financial resources that are derived or generated from property owned or controlled directly or indirectly by the Taliban or by any Taliban undertaking, and any other funds or financial resources, where—

- (a) such funds or financial resources are designated by the Committee in accordance with Resolution 1267; and
- (b) the designation is published in the Gazette by the authority of the Chief Executive.

(4) The provisions of this section shall apply to any person within the HKSAR and any person elsewhere who is—

- (a) both a Hong Kong permanent resident and a Chinese national; or
- (b) a body incorporated or constituted under the law of the HKSAR.

(5) A person specified in subsection (4) who contravenes subsection (1) shall be guilty of an offence.

4. Offences in connection with applications for permission, conditions attached to permission, etc.

(1) If, for the purpose of obtaining any permission referred to in section 2(1) or 3(1), a person makes any statement or furnishes any document or information that to his knowledge is false in a material particular or recklessly makes any statement or furnishes any document or information that is false in a material particular, he shall be guilty of an offence.

(2) Subject to subsection (3), a person who has done any act under the authority of a permission referred to in section 2(1) or 3(1) and who fails to comply with any condition attaching to the permission shall be guilty of an offence.

(3) It shall be a defence for a person charged with an offence under subsection (2) to prove that the condition with which he failed to comply was modified, otherwise than with his consent, by the Chief Executive after the doing of the act authorized by the permission.

5. Obtaining of evidence and information

The provisions of the Schedule shall have effect in order to—

- (a) facilitate the obtaining, by or on behalf of the Chief Executive, of evidence and information for the purpose of securing compliance with or detecting evasion of this Regulation;
- (b) facilitate the obtaining, by or on behalf of the Chief Executive, of evidence of the commission of an offence under this

Regulation or, with respect to any of the matters regulated by this Regulation, of an offence relating to customs or of an offence against any provision of law with respect to similar matters that is for the time being in force in the HKSAR.

6. Penalties and proceedings

(1) A person guilty of an offence under section 3(b) or (d) of the Schedule or section 2(2) shall be liable—

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

(2) A person guilty of an offence under section 3(5) shall be liable—

- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) A person guilty of an offence under section 4(1) or (2) shall be liable—

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

(4) A person guilty of an offence under section 3(a) or (c) of the Schedule shall be liable on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) Where a body corporate is guilty of an offence under this Regulation and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Summary proceedings for an offence under this Regulation, being an offence alleged to have been committed outside the HKSAR, may be instituted at any time not later than 12 months from the date on which the person charged first enters the HKSAR after committing the offence.

(7) No proceedings for an offence under this Regulation shall be instituted in the HKSAR except by or with the consent of the Secretary for Justice.

7. Grant of permission

No permission referred to in section 2(1) or 3(1) shall be granted except in accordance with a resolution of the Security Council of the United Nations.

8. Exceptions

(1) Nothing in section 2 shall apply to any flight that has been approved in advance by the Committee on the ground of humanitarian need.

(2) Nothing in section 3 shall apply to any action that has been authorized in advance by the Committee on the ground of humanitarian need.

(3) A person who claims that subsection (1) or (2) applies shall produce evidence in advance to prove that fact to the satisfaction of the Chief Executive.

9. Exercise of powers of the Chief Executive

(1) The Chief Executive may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorize the delegation of any of his powers or functions under this Regulation to any person, or any class or description of persons, approved by him, and references in this Regulation to the Chief Executive shall be construed accordingly.

(2) Subject to section 7, any permission referred to in section 2(1) or 3(1) may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the Chief Executive.

SCHEDULE

[ss. 5 & 6]

EVIDENCE AND INFORMATION

1. (1) Without prejudice to any other provision of this Regulation or any provision of any other law, the Chief Executive (or an authorized officer) may request any person in or resident in the HKSAR to furnish to the Chief Executive (or to that authorized officer) any information, or to produce to the Chief Executive (or to that authorized officer) any document, that the person has in his possession or control and that the Chief Executive (or that authorized officer) may require for the purpose of securing compliance with or detecting evasion of this Regulation, and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in subsection (1) shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested to do so under this section, the magistrate or court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this section to request any person to produce documents shall include the power to take copies of or extracts from any document so produced and to request that person or, where that person is a body corporate, any person who is a present or past officer of, or is employed by, the body corporate to provide an explanation of such document.

2. (1) If any magistrate or judge is satisfied by information on oath given by any police officer, customs officer or authorized officer—

- (a) that there is reasonable ground for suspecting that an offence under this Regulation or, with respect to any of the matters regulated by this Regulation, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information or in any vehicle, ship or aircraft so specified; or
- (b) that any document that ought to have been produced under section 1 and that has not been so produced is to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorizing any police officer or customs officer, together with any other persons named in the warrant and any other police or customs officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises or, as the case may be, the vehicle, ship or aircraft.

(2) A person authorized by any such warrant to search any premises or any vehicle, ship or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, ship or aircraft and may seize any document or article found on the premises or in the vehicle, ship or aircraft or on such person that he has reasonable ground to believe to be evidence of the commission of an offence referred to in subsection (1) or any other document that he has reasonable ground to believe ought to have been produced under section 1 and may take in relation to any such document or article any other steps that may appear necessary for preserving it and preventing interference with it:

Provided that no person shall in pursuance of any warrant issued under this section be searched except by a person of the same sex.

(3) Where, by virtue of this section, a person is empowered to enter any premises, vehicle, ship or aircraft, he may use such force as is reasonably necessary for that purpose.

(4) Any document or article of which possession is taken under this section may be retained for a period of 3 months or, if within that period there are commenced any proceedings for an offence referred to in subsection (1) to which it is relevant, until the conclusion of those proceedings.

(5) No information furnished or document produced (including any copy of or extract made of any document produced) by any person in pursuance of a request made under this Schedule, and no document seized under subsection (2) shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this paragraph but that such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced;
- (c) 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 any organ of the United Nations or to any person in the service of the United Nations or to 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 Taliban decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Regulation or, with respect to any of the matters regulated by this Regulation, for an offence under any enactment relating to customs.

3. Any person who—
- (a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it;
 - (b) intentionally furnishes false information or a false explanation to any person exercising his powers under this Schedule;
 - (c) otherwise intentionally obstructs any person in the exercise of his powers under this Schedule; or
 - (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,
- shall be guilty of an offence.

TUNG Chee-hwa
Chief Executive

15 June 2000

Explanatory Note

This Regulation is made under the United Nations Sanctions Ordinance (Cap. 537). It implements a decision of the Security Council of the United Nations in Resolution 1267 of 15 October 1999 (“the Resolution”) by—

- (a) prohibiting an aircraft from taking off from or landing in the Hong Kong Special Administrative Region if the aircraft is owned, leased or operated by or on behalf of the Taliban, as designated by the Committee established pursuant to the Resolution (“the Committee”); and
- (b) prohibiting certain specified actions where such actions are likely to make available to or for the benefit of the Taliban or any Taliban undertaking—
 - (i) any funds or other financial resources that are derived or generated from property owned or controlled by the Taliban or any Taliban undertaking, as designated by the Committee; or
 - (ii) any other funds or financial resources, as designated by the Committee.