

L.N. 268 of 2018

United Nations Sanctions (Mali) Regulation 2018

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United Nations Sanctions (Mali) Regulation 2018

(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 9 of Resolution 2374;

economic assets (經濟資產) means any funds or other financial assets or economic resources;

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;
- (g) documents evidencing an interest in funds or financial resources; and
- (h) any other instrument of export financing;

Hong Kong person (香港人) means—

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

licence (特許) means a licence granted under section 4(1);

relevant entity (有關實體) means—

- (a) an entity named in the list published under section 14(1);
- (b) an entity—
 - (i) acting on behalf of;
 - (ii) acting at the direction of; or

- (iii) owned or controlled by,
an individual or entity named in that list; or
- (c) an entity owned or controlled by an individual or entity—
 - (i) acting on behalf of; or
 - (ii) acting at the direction of,
an individual or entity named in that list;

relevant person (有關人士) means—

- (a) an individual named in the list published under section 14(1); or
- (b) an individual—
 - (i) acting on behalf of; or
 - (ii) acting at the direction of,
an individual or entity named in that list;

Resolution 2374 (《第 2374 號決議》) means Resolution 2374 (2017) adopted by the Security Council on 5 September 2017;

Secretary (局長) means the Secretary for Commerce and Economic Development;

Security Council (安理會) means the Security Council of the United Nations.

Part 2

Prohibitions

2. Making available or dealing with economic assets prohibited

- (1) This section applies to—
 - (a) a person acting in the HKSAR; and
 - (b) a Hong Kong person acting outside the HKSAR.
- (2) Except under the authority of a licence—
 - (a) a person must not directly or indirectly make available any economic assets to, or for the benefit of, a relevant person or a relevant entity; and
 - (b) a person must not directly or indirectly deal with any economic assets belonging to, or owned or controlled directly or indirectly by, a relevant person or a relevant entity (including, if the person is a relevant person or a relevant entity, the economic assets belonging to, or owned or controlled directly or indirectly by, the person).
- (3) However, subsection (2) does not apply if the person does the act in a place outside the HKSAR with permission granted in accordance with a law in force in the place (being a law substantially corresponding to section 4).
- (4) A person who contravenes subsection (2) commits an offence and is liable—
 - (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine and to imprisonment for 7 years.

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- (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) for a contravention of subsection (2)(a)—that the economic assets were, or were to be, made available to, or for the benefit of, a relevant person or a relevant entity; or
 - (b) for a contravention of subsection (2)(b)—that the person was dealing with economic assets belonging to, or owned or controlled directly or indirectly by, a relevant person or a relevant entity.
- (6) 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 directly or indirectly by, a relevant person or a relevant entity with—
- (a) interest or other earnings due on that account; or
 - (b) payment due under contracts, agreements or obligations that arose before the date on which the person or entity became a relevant person or a relevant entity.
- (7) In this section—
- deal with*** (處理) means—
- (a) in respect of funds—
 - (i) use, alter, move, allow access to or transfer;
 - (ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
 - (iii) make any other change that would enable use, including portfolio management; and

- (b) in respect of other financial assets or economic resources—use to obtain funds, goods or services in any way, including by selling, hiring or mortgaging the assets or resources.

3. **Entry or transit of persons prohibited**

- (1) A specified person must not enter or transit through the HKSAR.
 - (2) However, subsection (1) does not apply to a case in respect of which—
 - (a) the relevant entry or transit is necessary for the fulfilment of a judicial process;
 - (b) the Committee has determined that the relevant entry or transit is justified on the ground of humanitarian need, including religious obligation; or
 - (c) the Committee has determined that the relevant entry or transit would further the objectives of peace and national reconciliation in Mali and stability in the region.
 - (3) 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.
 - (4) This section does not apply to a person having the right of abode or the right to land in the HKSAR.
 - (5) In this section—
specified person (指明人士) means a person designated by the Committee for the purposes of paragraph 1 of Resolution 2374.
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Part 3

Licences

4. Licence for making available or dealing with economic assets

- (1) If, on application, the Chief Executive determines that one or more of the requirements in subsection (2) are met, the Chief Executive must grant, as appropriate, a licence for—
 - (a) making available economic assets to, or for the benefit of, a relevant person or a relevant entity; or
 - (b) dealing with economic assets belonging to, or owned or controlled directly or indirectly by, a relevant person or a relevant entity.
- (2) The requirements are as follows—
 - (a) the economic assets 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 economic assets belonging to, or owned or controlled directly or indirectly by, a relevant person or a relevant entity;
 - (b) the economic assets are necessary for extraordinary expenses;
 - (c) the economic assets are—

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- (i) the subject of a judicial, administrative or arbitral lien or judgment that was entered before 5 September 2017 and is not for the benefit of a relevant person or a relevant entity; and
 - (ii) to be used to satisfy the lien or judgment;
 - (d) the economic assets 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;
 - (e) the Committee has determined that making available, or dealing with, the economic assets would further the objectives of peace and national reconciliation in Mali and stability in the region.
- (3) However, if the Chief Executive determines that the requirement in subsection (2)(a) 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.
- (4) Also, if the Chief Executive determines that the requirement in subsection (2)(b) is met, the Chief Executive—
- (a) must cause the Committee to be notified of the determination; and
 - (b) must not grant the licence unless the Committee approves the determination.

- (5) Also, if the Chief Executive determines that the requirement in subsection (2)(c) is met, the Chief Executive must before granting the licence cause the Committee to be notified of the determination.
- (6) Also, if the Chief Executive determines that the requirement in subsection (2)(d) is met, the Chief Executive must cause the Committee to be notified of the determination not less than 10 working days before granting the licence.

5. Provision of false or misleading information or documents for purpose of obtaining licences

- (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 or misleading in a material particular commits an offence and is liable—
 - (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine and to imprisonment for 2 years.
 - (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 or misleading in a material particular commits an offence and is liable—
 - (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine and to imprisonment for 2 years.
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Part 4

Evidence

6. Interpretation of Part 4

In this Part—

premises (處所) includes any place and, in particular, includes—

- (a) any ship, aircraft, vehicle or offshore structure; and
- (b) any tent or movable structure;

seized property (被檢取財產) means anything seized under section 7(3).

7. 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, evidence in relation to the commission of the offence.
- (2) A warrant granted under subsection (1) may authorize an authorized officer, together with any other person named in the warrant, at any time within 1 month from the date of the warrant, to—
 - (a) enter the premises specified in the information; and
 - (b) search the premises.
- (3) A person authorized by a warrant to search any premises may exercise any or all of the following powers—

- (a) the power to 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;
 - (b) the power to seize and detain anything found—
 - (i) on the premises; or
 - (ii) 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) the power to take in relation to anything seized under paragraph (b) any other steps that may appear necessary for preserving the thing 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, the person may use any force that is reasonably necessary for the purpose.

8. Detention of seized property

- (1) Seized property may not be detained for more than 3 months.
 - (2) However, if seized property is relevant to an offence under this Regulation, and proceedings for the offence have begun, it may be detained until the completion of those proceedings.
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Part 5

Disclosure of Information or Documents

9. 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 require 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 Mali 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 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; and
 - (b) 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.
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Part 6

Other Offences and Miscellaneous Matters

10. Liability of persons other than principal offenders

- (1) If—
 - (a) the person convicted of an offence under this Regulation is a body corporate; and
 - (b) 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 also guilty of the offence.
- (2) If—
 - (a) the person convicted of an offence under this Regulation is a firm; and
 - (b) 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 other person concerned in the management of the firm,
the partner or other person is also guilty of the offence.

11. 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.

12. Offences in relation to evasion of this Regulation

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

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

13. 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 against a person for an offence under this Regulation that is alleged to have been committed outside the HKSAR must be commenced within 12 months from the date on which the person first enters the HKSAR after the alleged commission of the offence.

14. Publication of list of individuals and entities by Secretary

- (1) The Secretary may publish on the website of the Commerce and Economic Development Bureau (*CEDB*) a list of individuals and entities for the purposes of the definitions of *relevant person* and *relevant entity* in section 1.
- (2) The Secretary may include in the list the name of an individual or entity designated by the Committee for the purposes of paragraph 4 of Resolution 2374.
- (3) The list may also contain other information that the Secretary considers appropriate.

- (4) The Secretary may remove the name of an individual or entity from the list if the individual or entity no longer meets the description under subsection (2).
- (5) If a list is published under subsection (1), the Secretary is to make a copy of the list available for inspection by the public free of charge at the office of the Secretary during normal office hours.
- (6) In any legal proceedings, a document purporting to be a copy of a list referred to in subsection (1) printed from the website of the CEDB—
 - (a) is admissible in evidence on production without further proof; and
 - (b) unless the contrary is proved, is evidence of the information contained in the list.

15. 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 another person or class or description of person.
- (3) A delegation or authorization under subsection (1) or (2) may be subject to any restriction or condition the Chief Executive considers appropriate.

16. Exercise of powers of Secretary

- (1) The Secretary may delegate any of the Secretary's powers or functions under this Regulation to any person or class or description of person.

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- (2) A delegation under subsection (1) may be subject to any restriction or condition the Secretary considers appropriate.
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Part 7

Duration

17. Duration

This Regulation expires at midnight on 31 August 2019.

Matthew CHEUNG Kin-chung
Acting Chief Executive

18 December 2018

Explanatory Note

This Regulation gives effect to certain decisions in Resolution 2432 (2018) adopted by the Security Council of the United Nations on 30 August 2018 in respect of Mali 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.