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UNITED NATIONS SANCTIONS (DEMOCRATIC REPUBLIC OF THE CONGO) (NO. 2) REGULATION 2008

(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. Duration

This Regulation expires at midnight on 31 December 2008.

PART 1

PRELIMINARY

2. Interpretation

In this Regulation, unless the context otherwise requires—
“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;

“commander” (機長), in relation to an aircraft, means the member of the flight crew designated as the 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;

“Commissioner” (關長) means the Commissioner of Customs and Excise, the Deputy Commissioner of Customs and Excise or any Assistant Commissioner of Customs and Excise;

“Committee” (委員會) means the Committee of the Security Council established pursuant to paragraph 8 of Resolution 1533;

“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 9(1)(a) or (b), 10(1) or 11(1);

“master” (船長), in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“operator” (營運人), in relation to a ship, aircraft or vehicle, means the person for the time being having the management of the ship, aircraft or vehicle;

“prohibited goods” (禁制物品) means any arms or related material;

“relevant entity” (有關實體) means an entity specified by the Chief Executive as a relevant entity in accordance with section 31;

“relevant person” (有關人士) means a person specified by the Chief Executive as a relevant person in accordance with section 31;

“Resolution 1533” (《第 1533 號決議》) means Resolution 1533 (2004) adopted by the Security Council on 12 March 2004;

“Resolution 1596” (《第 1596 號決議》) means Resolution 1596 (2005) adopted by the Security Council on 18 April 2005;

“Resolution 1649” (《第 1649 號決議》) means Resolution 1649 (2005) adopted by the Security Council on 21 December 2005;

“Resolution 1698” (《第 1698 號決議》) means Resolution 1698 (2006) adopted by the Security Council on 31 July 2006;

“Resolution 1807” (《第 1807 號決議》) means Resolution 1807 (2008) adopted by the Security Council on 31 March 2008;

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

PART 2

PROHIBITIONS

Supply or delivery of goods

3. Prohibition against supply or delivery of certain goods to persons in Congo

- (1) This section applies to—
 - (a) a person in the HKSAR; and
 - (b) a person 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 granted under section 9(1)(a), a person shall not supply or deliver, agree to supply or deliver, or do any act likely to promote the supply or delivery of, any prohibited goods—
- (a) to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo; or
 - (b) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo.
- (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 any proceedings for an offence under subsection (3), it is a defence for a person charged to prove that he did not know and had no reason to believe—
- (a) that the goods concerned were prohibited goods; or
 - (b) that the goods concerned were to be supplied or delivered—
 - (i) to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo.

Carriage of goods

4. Prohibition against carriage of certain goods to persons in Congo

- (1) This section applies to—
- (a) a ship that is registered in the HKSAR;
 - (b) an aircraft that is registered in the HKSAR;
 - (c) any other ship or aircraft that is for the time being chartered to a person who is—
 - (i) in the HKSAR;
 - (ii) both a Hong Kong permanent resident and a Chinese national; or

- (iii) a body incorporated or constituted under the law of the HKSAR; and
 - (d) a vehicle in the HKSAR.
- (2) Without limiting section 3, a ship, aircraft or vehicle shall not, except under the authority of a licence granted under section 9(1)(b), be used for the carriage of any prohibited goods if the carriage is, or forms part of, carriage—
- (a) to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo; or
 - (b) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo.
- (3) Subsection (2) does not apply if—
- (a) the carriage of the prohibited goods is performed in the course of the supply or delivery of the prohibited goods; and
 - (b) the supply or delivery was authorized by a licence granted under section 9(1)(a).
- (4) If a ship, aircraft or vehicle is used in contravention of subsection (2), each specified person 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) In any proceedings for an offence under subsection (4), it is a defence for a person charged to prove that he did not know and had no reason to believe—
- (a) that the goods concerned were prohibited goods; or
 - (b) that the carriage of the goods concerned was, or formed part of, carriage—
 - (i) to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo.
- (6) In this section, “specified person” (指明人士) means—
- (a) in relation to a ship registered in the HKSAR, the charterer, operator or master of the ship;
 - (b) in relation to any other ship—
 - (i) the charterer of the ship;
 - (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; or

- (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 relation to an aircraft registered in the HKSAR, the charterer, operator or commander of the aircraft;
- (d) in relation to any other aircraft—
 - (i) the charterer of the aircraft;
 - (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; or
 - (iii) the commander of the aircraft, if the commander is in the HKSAR or is both a Hong Kong permanent resident and a Chinese national; or
- (e) in relation to a vehicle, the operator or driver of the vehicle.

Provision of assistance, advice or training

5. Prohibition against provision of certain assistance, advice or training to persons in Congo

- (1) This section applies to—
 - (a) a person in the HKSAR; and
 - (b) a person 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 granted under section 10(1), a person shall not provide to a person operating in the territory of the Democratic Republic of the Congo any assistance, advice or training related to military activities, including financing and financial assistance.
- (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 any proceedings for an offence under subsection (3), it is a defence for a person charged to prove that he did not know and had no reason to believe—

- (a) that the assistance, advice or training concerned was to be provided to a person operating in the territory of the Democratic Republic of the Congo; or
- (b) that the assistance, advice or training concerned related to military activities.

Making available funds, etc. to certain persons or entities

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

- (1) This section applies to—
 - (a) a person in the HKSAR; and
 - (b) a person 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 granted under section 11(1), a person shall not make available any funds or other financial assets or economic resources to or for the benefit of a relevant person or a relevant entity.

(3) The addition to an account owned or controlled by a relevant person or a relevant entity of interest or other earnings due on that account does not constitute making available funds or other financial assets or economic resources to or for the benefit of the relevant person or the relevant entity; but the interest or earnings so added shall be subject to subsection (2).

(4) 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.

(5) In any proceedings for an offence under subsection (4), it is a defence for a person charged to prove that he did not know and had no reason to believe that the funds or other financial assets or economic resources concerned were to be made available to or for the benefit of a relevant person or a relevant entity.

Entry into or transit through HKSAR

7. Prohibition against entry or transit by certain persons

(1) Subject to section 8, a specified person shall 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 shall not prohibit a person having the right of abode or the right to land in the HKSAR from entry into the HKSAR.

(4) In this section—
“specified person” (指明人士) means—

- (a) a person—
 - (i) designated by the Committee pursuant to paragraph 13 of Resolution 1596 as read with paragraph 2 of Resolution 1649 and paragraph 13 of Resolution 1698; and
 - (ii) in respect of whom paragraph 9 of Resolution 1807 applies by virtue of paragraph 14 of that Resolution; or
- (b) a person designated by the Committee pursuant to paragraph 13 of Resolution 1807.

8. Exceptions to prohibition against entry or transit by certain persons

Section 7 does not apply if—

- (a) the Committee determines in advance and on a case-by-case basis that the relevant entry into or transit through the HKSAR is justified on the ground of humanitarian need, including religious obligation;
- (b) the Committee concludes that the relevant entry into or transit through the HKSAR would further the objectives of the resolutions of the Security Council, that is peace and national reconciliation in the Democratic Republic of the Congo and stability in the region;
- (c) the Committee authorizes in advance and on a case-by-case basis the relevant transit through the HKSAR of a person returning to the territory of the State of his nationality; or
- (d) the Committee authorizes in advance and on a case-by-case basis the relevant transit through the HKSAR of a person participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law.

PART 3

LICENCE

9. Licence for supply, delivery or carriage of certain goods

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, subject to subsection (3), on application, grant, as appropriate—

- (a) a licence for the supply or delivery of, or the doing of an act likely to promote the supply or delivery of, prohibited goods—
 - (i) to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo; or
- (b) a licence for the carriage of prohibited goods which is, or forms part of, carriage—
 - (i) to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person operating in the territory of the Democratic Republic of the Congo.

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

- (a) it is a supply, delivery or carriage of prohibited goods to the Government of the Democratic Republic of the Congo;
- (b) the prohibited goods are intended solely for support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo;
- (c) the prohibited goods are protective clothing, including flack jackets and military helmets, to be temporarily exported to the Democratic Republic of the Congo by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;
- (d) the prohibited goods are non-lethal military equipment intended solely for humanitarian or protective use.

(3) Where the Chief Executive is satisfied that the requirement in subsection (2)(a) or (d) is met, before granting the licence, he shall notify the Committee of the proposed supply, delivery or carriage of the prohibited goods to which the application for the licence relates.

10. Licence for provision of certain assistance, advice or training

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, subject to subsection (3), on application, grant a licence for the provision to a person operating in the territory of the Democratic Republic of the Congo of assistance, advice or training related to military activities, including financing and financial assistance.

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

- (a) the assistance, advice or training is provided to the Government of the Democratic Republic of the Congo;
- (b) the assistance, advice or training is related to protective clothing, including flack jackets and military helmets, to be temporarily exported to the Democratic Republic of the Congo by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;
- (c) the assistance or training is technical assistance or training intended solely for support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo;
- (d) the assistance or training is technical assistance or training related to non-lethal military equipment intended solely for humanitarian or protective use.

(3) Where the Chief Executive is satisfied that the requirement in subsection (2)(a) or (d) is met, before granting the licence, he shall notify the Committee of the proposed provision of the assistance, advice or training to which the application for the licence relates.

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

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, subject to subsection (3), on application, grant a licence for making available funds or other financial assets or economic resources to or for the benefit of 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 have been determined by the Chief Executive to be—

- (i) necessary for basic expenses, including payment for foodstuffs, rents, mortgages, medicines and medical treatments, taxes, insurance premiums, and public utility charges; or
 - (ii) for the payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services;
 - (b) the funds or other financial assets or economic resources have been determined by the Chief Executive to be necessary for extraordinary expenses;
 - (c) the funds or other financial assets or economic resources have been determined by the Chief Executive to be the subject of a judicial, administrative or arbitration lien or judgment, and the lien or judgment—
 - (i) was entered prior to 31 March 2008; and
 - (ii) is not for the benefit of a person designated by the Committee pursuant to paragraph 13 of Resolution 1807.
- (3) Where the Chief Executive is satisfied that—
 - (a) the requirement in subsection (2)(a) is met, he—
 - (i) shall notify the Committee of the intention to authorize access to the funds or other financial assets or economic resources to which the application for the licence relates; and
 - (ii) shall not grant the licence if the Committee makes a negative decision within 4 working days of the notification;
 - (b) the requirement in subsection (2)(b) is met, he—
 - (i) shall notify the Committee that the funds or other financial assets or economic resources to which the application for the licence relates have been determined by him to be necessary for extraordinary expenses; and
 - (ii) shall not grant the licence unless the Committee approves the determination;
 - (c) the requirement in subsection (2)(c) is met, before granting the licence, he shall notify the Committee that the funds or other financial assets or economic resources to which the application for the licence relates have been determined by him to be the subject of a judicial, administrative or arbitration lien or judgment described in that subsection.
- (4) A licence granted by the Chief Executive under subsection (1), on his being satisfied that the requirement in subsection (2)(c) is met, shall only authorize that the funds or other financial assets or economic resources be used to satisfy the relevant lien or judgment.

12. Provision of false information or documents for purpose of obtaining licences

(1) If, for the purpose of obtaining a licence, a person makes any statement or provides or produces any information or document that he knows to be false in a material particular, the person 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) If, for the purpose of obtaining a licence, a person recklessly makes any statement or provides or produces any information or document that is false in a material particular, the person 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.

PART 4

THINGS DONE OUTSIDE HKSAR

13. Licence or permission granted by authorities of places outside HKSAR

(1) If the circumstances described in subsection (2) apply, a provision of this Regulation which prohibits the doing of a thing except under the authority of a licence shall not have effect in relation to any such thing done in a place outside the HKSAR by—

- (a) a person who is ordinarily resident in that place; or
- (b) a body corporate incorporated or constituted under the law of that place.

(2) For the purposes of subsection (1), the circumstances are that the thing is done 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.

PART 5

ENFORCEMENT OF REGULATION

*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 4 applies has been, is being or is about to be used in contravention of section 4(2), he may—

- (a) either alone or accompanied and assisted by any person acting under his 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 such information relating to the ship and its cargo, and produce for his inspection such documents so relating and such cargo carried on it, as he may specify.

(2) If an authorized officer has reason to suspect that a ship to which section 4 applies is being or is about to be used in contravention of section 4(2), he may (either there and then or on consideration of any information provided or document or cargo produced in response to a request made under subsection (1)(b)), with a view to preventing the commission, or the continued commission, of such a contravention or in order that enquiries may be pursued, 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 one or more of the following steps—
 - (i) to cause the ship, including 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 such port as is 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 such other destination as may be specified by an authorized officer in agreement with the charterer, operator or master.

(3) A power conferred by this section to request the provision of any information or the production of any document or cargo 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 document or cargo should be produced for inspection.

15. Offences by charterer, operator or master of ship

(1) If a charterer, operator or master of a ship 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, the charterer, operator or master commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) If a charterer, operator or master of a ship, 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 he 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, the charterer, operator or master 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 prejudice to 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, he may take such steps as appear to him to be necessary to secure compliance with that request, including, in particular, the following steps—

- (a) to enter, or authorize the entry on, any land and the ship concerned;
- (b) to detain, or authorize the detention of, that ship and any of its cargo; and
- (c) to use, or authorize the use of, reasonable force.

(2) Subject to subsection (3), subsection (1) does not authorize the detention of any ship for more than 12 hours.

(3) The Chief Secretary for Administration may, by order in writing signed by him, authorize the detention of a ship referred to in subsection (1) for further periods of not more than 12 hours each, and any such order shall state the times from which and for which the order shall be effective.

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 4 applies has been, is being or is about to be used in contravention of section 4(2), he may—

- (a) either alone or accompanied and assisted by any person acting under his 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 commander of the aircraft to provide such information relating to the aircraft and its cargo, and produce for his inspection such documents so relating and such cargo carried on it, as he 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 document or cargo produced in response to a request made under subsection (1)(b)) further request the charterer, operator or commander to cause the aircraft and any of its cargo to remain in the HKSAR until the charterer, operator or commander is notified by an authorized officer that the aircraft and its cargo may depart.

(3) A power conferred by this section to request the provision of any information or the production of any document or cargo 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 document or cargo should be produced for inspection.

18. Offences by charterer, operator or commander of aircraft

(1) If a charterer, operator or commander of an aircraft, 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, the charterer, operator or commander commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) If a charterer, operator or commander of an aircraft, 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 he 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, the charterer, operator or commander 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 prejudice to 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, he may take such steps as appear to him to be necessary to secure compliance with that request, including, in particular, the following steps—

- (a) to enter, or authorize the entry on, any land and the aircraft concerned;
- (b) to detain, or authorize the detention of, that aircraft and any of its cargo; and
- (c) to use, or authorize the use of, reasonable force.

(2) Subject to subsection (3), subsection (1) does not authorize the detention of any aircraft for more than 6 hours.

(3) The Chief Secretary for Administration may, by order in writing signed by him, authorize the detention of an aircraft referred to in subsection (1) for further periods of not more than 6 hours each, and any such order shall state the times from which and for which the order shall be effective.

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 4(2), he may—

- (a) either alone or accompanied and assisted by any person acting under his 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 such information relating to the vehicle and any article carried on it, and produce for his inspection such documents so relating and such articles carried on it, as he may specify; and
- (c) (either there and then or on consideration of any information provided or document or article produced in response to a request made under paragraph (b)) further request the operator or driver to take the vehicle and any article carried on it to such place as is 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 the provision of any information or the production of any document or article 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 document or article should be produced for inspection.

21. Offences by operator or driver of vehicle

(1) If an operator or driver of a vehicle, 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, the operator or driver commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) If an operator or driver of a vehicle, 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 he 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, the operator or driver 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 prejudice to 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, he may take such steps as appear to him to be necessary to secure compliance with that request, including, in particular, the following steps—

- (a) to enter, or authorize the entry on, any land and enter, or authorize the entry into, the vehicle concerned;
- (b) to detain, or authorize the detention of, that vehicle and any article carried on it; and
- (c) to use, or authorize the use of, reasonable force.

(2) Subject to subsection (3), subsection (1) does not authorize the detention of any vehicle for more than 12 hours.

(3) The Commissioner may, by order in writing signed by him, authorize the detention of a vehicle referred to in subsection (1) for further periods of not more than 12 hours each, and any such order shall state the times from which and for which the order shall be effective.

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 shall, if requested so to do, produce evidence of his identity.

PART 6

EVIDENCE

24. Power of magistrate or judge to grant warrant

(1) A magistrate or judge may grant a warrant if he is 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) to search any person who is found on, or whom he has reasonable grounds to believe to have recently left or to be about to enter, the premises, ship, aircraft or vehicle;
- (b) to seize and detain any document or article found on the premises, ship, aircraft or vehicle or on such person that he has reasonable grounds to believe to be evidence in relation to the commission of an offence under this Regulation;
- (c) to take in relation to any such document or article any other steps that may appear necessary for preserving the document or article seized 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, he may use such force as is reasonably necessary for that purpose.

25. Detention of documents or articles seized

(1) Subject to subsection (2), any document or article seized under section 24(3) may not be detained for a period of more than 3 months.

(2) If the document or article is relevant to an offence under this Regulation, and proceedings for the offence have begun, the document or article may be detained until the completion of those proceedings.

PART 7

DISCLOSURE OF INFORMATION OR DOCUMENTS

26. Disclosure of information or documents

(1) Any information or document provided, produced or seized in pursuance of this Regulation may be disclosed only if—

- (a) the person who provided or produced the information or document or the person 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 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 Democratic Republic of the Congo 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 he has obtained the information or possessed the document only in his capacity as servant or agent of another person; and
- (b) a person may give consent to the disclosure if he is entitled to the information or to the possession of the document in his own right.

PART 8

OTHER OFFENCES AND MISCELLANEOUS MATTERS

27. Liability of person other than principal offender

(1) Where 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) Where 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.

28. 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 his powers under this Regulation commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

29. Offences in relation to evasion of this Regulation

A person who destroys, mutilates, defaces, secretes or removes any document 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.

30. Proceedings to be instituted

(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.

31. Specification of relevant person or relevant entity by Chief Executive

The Chief Executive may, by notice published in the Gazette, specify any of the following persons or entities as a relevant person or a relevant entity—

- (a) a person or entity—
 - (i) designated by the Committee pursuant to paragraph 15 of Resolution 1596 as read with paragraph 2 of Resolution 1649 and paragraph 13 of Resolution 1698; and
 - (ii) in respect of whom paragraph 11 of Resolution 1807 applies by virtue of paragraph 14 of that Resolution;
- (b) a person or entity designated by the Committee pursuant to paragraph 13 of Resolution 1807.

32. Exercise of powers of Chief Executive

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 class or description of persons, approved by him, and references in this Regulation to the Chief Executive shall be construed accordingly.

Donald TSANG
Chief Executive

10 June 2008

Explanatory Note

The purpose of this Regulation is to give effect to certain decisions in Resolution 1807 (2008) as adopted by the Security Council of the United Nations on 31 March 2008 by providing for the prohibition against—

- (a) the supply, delivery and carriage of arms and related materials to certain persons;
- (b) the provision to certain persons of assistance, advice or training related to military activities;
- (c) making available to or for the benefit of certain persons or entities any funds or other financial assets or economic resources; and
- (d) entry into or transit through the HKSAR of certain persons.