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United Nations Sanctions (Yemen) Regulation 2015

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United Nations Sanctions (Yemen) Regulation 2015

(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—

arms or related materiel (軍火或相關的物資) includes—

(a) any weapon, ammunition, military vehicle, military equipment or paramilitary equipment; and

(b) any spare part for any item specified in paragraph (a);

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;

Commissioner (關長) means the Commissioner of Customs and Excise, any 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 under paragraph 19 of Resolution 2140;

designated entity (指認實體) means—

(a) an entity specified by the Chief Executive as a designated entity in accordance with section 31;

(b) an entity acting on behalf of, or at the direction of, or owned or controlled by, a person or entity specified by the Chief Executive as a designated person or designated entity in accordance with section 31; 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 designated person or designated entity in accordance with section 31;

designated person (指認人士) means—

(a) a person named in paragraph 14 of Resolution 2216;

(b) a person listed in the Annex of Resolution 2216;

(c) a person specified by the Chief Executive as a designated person in accordance with section 31; or

(d) a person acting on behalf of, or at the direction of, a person or entity specified by the Chief Executive as a designated person or designated entity in accordance with section 31;

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 8(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;

pilot in command (機長), in relation to an aircraft, means the pilot designated by the operator or the owner, as appropriate, as being in charge of the aircraft without being under the direction of any other pilot in the aircraft and charged with the safe conduct of a flight;

prohibited goods (禁制物品) means any arms or related materiel;

relevant entity (有關實體) means—

(a) an entity specified by the Chief Executive as a relevant entity in accordance with section 30;

(b) an entity acting on behalf of, or at the direction of, or owned or controlled by, a person or entity specified by the Chief Executive as a relevant person or relevant entity in accordance with section 30; 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 in accordance with section 30;

relevant person (有關人士) means—

(a) a person specified by the Chief Executive as a relevant person in accordance with section 30; 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 in accordance with section 30;

Resolution 2140 (《第2140號決議》) means Resolution 2140 (2014) adopted by the Security Council on 26 February 2014;

Resolution 2216 (《第2216號決議》) means Resolution 2216 (2015) adopted by the Security Council on 14 April 2015;

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

Part 2

Prohibitions

2. Prohibition against supply, sale or transfer of certain goods

(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) A person must not supply, sell or transfer, or agree to supply, sell or transfer, directly or indirectly, or do any act likely to promote the supply, sale or transfer of, any prohibited goods—

(a) to, or to the order of, or for the benefit of, a designated person or a designated entity; or

(b) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, or for the benefit of, a designated person or a designated entity.

(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) 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 goods concerned were prohibited goods; or

(b) that the goods concerned were or were to be supplied, sold or transferred—

(i) to, or to the order of, or for the benefit of, a designated person or a designated entity; or

(ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, or for the benefit of, a designated person or a designated entity.

3. Prohibition against carriage of certain goods

(1) This section applies to—

(a) a ship that is registered in the HKSAR;

(b) a ship that is not registered in the HKSAR and is within the waters of Hong Kong;

(c) an aircraft that is registered in the HKSAR;

(d) an aircraft that is not registered in the HKSAR and is within Hong Kong air space;

(e) 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

(f) a vehicle in the HKSAR.

(2) Without limiting section 2, a ship, aircraft or vehicle must not be used for the carriage of any prohibited goods if the carriage is, or forms part of, a carriage—

(a) to, or to the order of, or for the benefit of, a designated person or a designated entity; or

(b) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, or for the benefit of, a designated person or a designated entity.

(3) If a ship, aircraft or vehicle is used in contravention of subsection (2), each of the following persons commits an offence—

(a) for a ship registered in the HKSAR, the charterer, the operator and the master of the ship;

(b) for any other ship—

(i) the charterer of the ship, if the charterer 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;

(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; and

(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) for an aircraft registered in the HKSAR, the charterer, the operator and the pilot in command of the aircraft;

(d) for any other aircraft—

(i) the charterer of the aircraft, if the charterer 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;

(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; and

(iii) the pilot in command of the aircraft, if the pilot in command is in the HKSAR or is both a Hong Kong permanent resident and a Chinese national;

(e) for a vehicle, the operator and the driver of the vehicle.

(4) A person who commits an offence under subsection (3) 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) 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 goods concerned were prohibited goods; or

(b) that the carriage of the goods concerned was, or formed part of, a carriage—

(i) to, or to the order of, or for the benefit of, a designated person or a designated entity; or

(ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to, or to the order of, or for the benefit of, a designated person or a designated entity.

4. Prohibition against provision of certain assistance or training

(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) A person must not provide, directly or indirectly, to a designated person or a designated entity any technical assistance, training, financial or other assistance, related to military activities or to the provision, maintenance or use of any prohibited goods, including the provision of armed mercenary personnel.

(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) 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 assistance or training concerned was or was to be provided to a designated person or a designated entity; or

(b) that the assistance or training concerned related to military activities or to the provision, maintenance or use of any prohibited goods.

5. 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 granted under section 8(1)—

(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

(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.

6. Prohibition against entry or transit by certain persons

(1) Subject to section 7, 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 15 of Resolution 2140.

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

Section 6 does not apply to a case in respect of which—

(a) the Committee has determined that the relevant entry into or transit through the HKSAR 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;

(c) the Committee has determined that the relevant entry or transit would further the objectives of peace and national reconciliation in Yemen; or

(d) the relevant entry or transit is required to advance peace and stability in Yemen.

Part 3

Licence

8. 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

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 26 February 2014 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.

9. Provision of false 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 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.

Part 4

Things Done outside HKSAR

10. 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.

Part 5

Enforcement of Regulation

Division 1—Investigation, etc. of Suspected Ships

11. Investigation of suspected ships

(1) If an authorized officer has reason to suspect that a ship to which section 3 applies has been, is being or is about to be used in contravention of section 3(2), the officer may—

(a) either alone or accompanied and assisted by any person acting under the officer's 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 any information relating to the ship or its cargo, or produce for inspection any of its cargo or any document relating to the ship or its cargo, that the officer may specify.

(2) If an authorized officer has reason to suspect that a ship to which section 3 applies is being or is about to be used in contravention of section 3(2), the officer may, for the purpose of stopping or preventing the use of the ship in contravention of section 3(2) or to pursue enquiries, either there and then or on consideration of any information provided or cargo or document produced in response to a request made under subsection (1)(b), 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 any of the following steps—

(i) to cause the ship and 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 a port 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 another destination specified by an authorized officer in agreement with the charterer, operator or master.

(3) A power conferred by this section to request a person to provide any information or produce any cargo or document 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 cargo or document should be produced for inspection.

12. Offences by charterer, operator or master of ship

(1) A charterer, operator or master of a ship who disobeys any direction given under section 11(2)(a), or, without reasonable excuse, refuses or fails to comply with a request made under section 11(1)(b) or (2)(b) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) A charterer, operator or master of a ship who, in response to a request made under section 11(1)(b) or (2)(b), provides or produces to an authorized officer any information or document that the charterer, operator or master 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, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

13. Power of authorized officers to enter and detain ships

(1) Without limiting section 12, if an authorized officer has reason to suspect that a request that has been made under section 11(2)(b) may not be complied with, the officer may take any steps that appear to the officer to be necessary to secure compliance with that request including, in particular, any of the following steps—

(a) enter or authorize the entry on any land or the ship concerned;

(b) detain or authorize the detention of that ship or any of its cargo;

(c) use or authorize the use of reasonable force.

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

(3) The Chief Secretary for Administration may, by order in writing, authorize the detention of a ship for further periods of not more than 12 hours each, and the order must state the time from which, and period for which, the order is effective.

Division 2—Investigation, etc. of Suspected Aircraft

14. Investigation of suspected aircraft

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

(a) either alone or accompanied and assisted by any person acting under the officer's authority, board the aircraft and search it and, for that purpose, use or authorize the use of reasonable force; and

(b) request the charterer, operator or pilot in command of the aircraft to provide any information relating to the aircraft or its cargo, or produce for inspection any of its cargo or any document relating to the aircraft or its cargo, that the officer may specify.

(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 cargo or document produced in response to a request made under subsection (1)(b), further request the charterer, operator or pilot in command of the aircraft to cause the aircraft and any of its cargo to remain in the HKSAR until the charterer, operator or pilot in command is

notified by an authorized officer that the aircraft and its cargo may depart.

(3) A power conferred by this section to request a person to provide any information or produce any cargo or document 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 cargo or document should be produced for inspection.

15. Offences by charterer, operator or pilot in command of aircraft

(1) A charterer, operator or pilot in command of an aircraft who, without reasonable excuse, refuses or fails to comply with a request made under section 14(1)(b) or (2) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) A charterer, operator or pilot in command of an aircraft who, in response to a request made under section 14(1)(b) or (2), provides or produces to an authorized officer any information or document that the charterer, operator or pilot in command 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, 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 aircraft

(1) Without limiting section 15, if an authorized officer has reason to suspect that a request that has been made under section 14(2) may not be complied with, the officer may take any steps that appear to the officer to be necessary to secure compliance with that request including, in particular, any of the following steps—

(a) enter or authorize the entry on any land or the aircraft concerned;

(b) detain or authorize the detention of that aircraft or any of its cargo;

(c) use or authorize the use of reasonable force.

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

(3) The Chief Secretary for Administration may, by order in writing, authorize the detention of an aircraft for further periods of not more than 6 hours each, and the order must state the time from which, and period for which, the order is effective.

Division 3—Investigation, etc. of Suspected Vehicles

17. 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 3(2), the officer may—

(a) either alone or accompanied and assisted by any person acting under the officer's 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 any information relating to the vehicle or any article carried on it, or produce for inspection any article carried on it or any document relating to the vehicle or any article carried on it, that the officer may specify; and

(c) further request, either there and then or on consideration of any information provided or article or document produced in response to a request made under paragraph (b), the operator or driver to take the vehicle and any article carried on it to a place 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 a person to provide any information or produce any article or document 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 article or document should be produced for inspection.

18. Offences by operator or driver of vehicle

(1) An operator or driver of a vehicle who, without reasonable excuse, refuses or fails to comply with a request made under section 17(1)(b) or (c) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) An operator or driver of a vehicle who, in response to a request made under section 17(1)(b) or (c), provides or produces to an authorized officer any information or document that the operator or driver 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, 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 vehicles

(1) Without limiting section 18, if an authorized officer has reason to suspect that a request that has been made under section 17(1)(c) may not be complied with, the officer may take any steps that appear to the officer to be necessary to secure compliance with that request including, in particular, any of the following steps—

(a) enter or authorize the entry on any land or enter or authorize the entry into the vehicle concerned;

(b) detain or authorize the detention of that vehicle or any article carried on it;

(c) use or authorize the use of reasonable force.

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

(3) The Commissioner may, by order in writing, authorize the detention of a vehicle for further periods of not more than 12 hours each, and the order must state the time from which, and period for which, the order is effective.

Division 4—Proof of Identity

20. Production of proof of identity

Before or on exercising a power conferred by section 11, 13, 14, 16, 17 or 19, an authorized officer must, if requested by any person so to do, produce proof of the officer's identity to the person for inspection.

Part 6

Evidence

21. 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.

22. Seized articles, etc. liable to forfeiture

(1) If an authorized officer intends to apply to a magistrate or judge under section 23 for an order for forfeiture of any document, cargo or article seized under section 21(3), the officer must, within 30 days from the date of the seizure, serve notice of that intention on every person who was, to the knowledge of the officer at the time of, or immediately after, the seizure, an owner of the document, cargo or article.

(2) A notice under subsection (1) is to be regarded as having been duly served on a person if—

(a) it is delivered personally to the person;

(b) it is sent by registered post addressed to the person at any place of residence or business of the person known to the authorized officer; or

(c) where the notice cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the offices of the Customs and Excise Department, in a place to which the public have access, for a period of not less than 7 days commencing within 30 days from

the date of the seizure of the document, cargo or article.

(3) An owner, or the authorized agent of an owner, of the document, cargo or article referred to in a notice served under subsection (1), or a person who was in possession of the document, cargo or article at the time of seizure, or a person who has a legal or equitable interest in the document, cargo or article, may object to the proposed forfeiture by serving a notice in writing on the Commissioner.

(4) A notice of objection under subsection (3)—

(a) must be served on the Commissioner by a person referred to in subsection (3) (***claimant***) within 30 days from—

(i) if the notice under subsection (1) is delivered personally to the person named in the notice, the date of delivery;

(ii) if the notice under subsection (1) is sent by registered post, 2 days after the date of posting; or

(iii) if the notice under subsection (1) is exhibited as described in subsection (2)(c), the first day it is so exhibited;

(b) must state the claimant's full name and address for service in Hong Kong; and

(c) if the claimant does not have a permanent address in Hong Kong, must state the name and address of a solicitor who is qualified to practise under the Legal Practitioners Ordinance (Cap. 159) and is authorized to accept service on behalf of the claimant in relation to any forfeiture proceedings.

(5) An authorized officer may apply to a magistrate or judge for an order for forfeiture of any seized document, cargo or article in respect of which a notice has been served under subsection (1)—

(a) after the expiration of the appropriate period of time specified in subsection (4)(a) for the serving of a notice of objection; or

(b) if a notice of objection is served in accordance with subsections (3) and (4), after the receipt of the notice.

23. Power of magistrate or judge to make order for forfeiture and disposal

(1) If an application is made to a magistrate or judge for an order for forfeiture of any seized document, cargo or article, the magistrate or judge may, if satisfied that the seized document is a document relating to the provision, maintenance or use of any prohibited goods, or that the seized cargo or article is prohibited goods, make such order as the magistrate or judge thinks fit for the forfeiture of the document, cargo or article and its subsequent destruction or disposal.

(2) An order under subsection (1) may be made in respect of any seized document, cargo or article whether or not any person has been convicted of any offence in connection with the document, cargo or article.

(3) Before making an order for forfeiture of any seized document, cargo or article, a magistrate or judge must issue a summons to any person who serves a notice of objection in accordance with section 22(3) and (4) to appear on a day specified in the summons to show cause why the document, cargo or article should not be forfeited.

(4) If any summons issued under subsection (3) has not for any reason been served and the magistrate or judge is satisfied that all reasonable efforts have been made to serve the summons on the person named in the summons, the magistrate or judge may make an order for forfeiture under this section despite the fact that the summons has not been served on that person.

24. Detention of documents, cargoes or articles seized

(1) Subject to subsection (2), any document, cargo or article seized under section 21(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.

Part 7

Disclosure of Information or Documents

25. 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 Yemen 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.

Part 8

Other Offences and Miscellaneous Matters

26. 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.

27. 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.

28. 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.

29. 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.

30. 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 11 of Resolution 2140.

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

The Chief Executive may, by notice published in the Gazette, specify as a designated person or a designated entity a person or an entity designated by the Committee for the purposes of paragraph 20(d) of Resolution 2216.

32. 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.

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

Part 9

Duration

33. Duration

The following provisions expire at midnight on 26 February 2016—

(a) the definitions of ***economic resources***, ***funds***, ***licence***, ***relevant entity*** and ***relevant person*** in section 1;

(b) sections 5, 6 and 7;

(c) Part 3;

(d) section 30.

C. Y. LEUNG
Chief Executive

14 July 2015

Explanatory Note

The purpose of this Regulation is to give effect to certain decisions in Resolution 2204 (2015) and Resolution 2216 (2015) as adopted by the Security Council of the United Nations on 24 February 2015 and 14 April 2015 respectively by providing for the prohibition against—

(a) the supply, sale, transfer or carriage of arms or related materiel to certain persons or entities;

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

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

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

(e) entry into or transit through the HKSAR by certain persons.