

L.N. 158 of 2019

United Nations Sanctions (South Sudan) Regulation 2019

Contents

Section	Page
Part 1	
Preliminary	
1.	InterpretationB4359
2.	Limited duration of certain provisionsB4367
Part 2	
Prohibitions	
3.	Supply of goods prohibitedB4369
4.	Carriage of goods prohibitedB4371
5.	Provision of assistance prohibitedB4375
6.	Making available or dealing with economic assets prohibitedB4377
7.	Entry or transit of persons prohibitedB4381
8.	Acts done outside HKSAR with permission granted outside HKSAR not prohibitedB4383
Part 3	
Licences	
9.	Licence for supply or carriage of goodsB4385

Section	Page
10.	Licence for provision of assistanceB4389
11.	Licence for making available or dealing with economic assetsB4391
12.	Provision of false or misleading information or documents for purpose of obtaining licencesB4395

Part 4

Enforcement

13.	Application of Part 4B4397
14.	Power to board and search modes of transportB4397
15.	Power to require information and production of document, cargo or articleB4397
16.	Power to direct movementB4399
17.	Failure to comply with direction or requirementB4401
18.	Provision of false or misleading information or documentsB4403
19.	Power to enter and detain modes of transportB4403
20.	Production of proof of identityB4405

Part 5

Evidence

21.	Interpretation of Part 5B4407
22.	Power of magistrate or judge to grant warrantB4407
23.	Notice of intended forfeitureB4409

Section	Page
24.	Notice of objection to intended forfeitureB4411
25.	Application for order for forfeitureB4413
26.	Power of magistrate or judge to make order for forfeiture and disposalB4413
27.	Detention of seized property B4415

Part 6

Disclosure of Information or Documents

28.	Disclosure of information or documentsB4417
-----	---

Part 7

Other Offences and Miscellaneous Matters

29.	Liability of persons other than principal offendersB4421
30.	Offences in relation to obstruction of authorized persons etc.B4421
31.	Offences in relation to evasion of this RegulationB4423
32.	Consent and deadline for prosecutionB4423
33.	Publication of list of individuals and entities by SecretaryB4423
34.	Exercise of powers of Chief ExecutiveB4425
35.	Exercise of powers of SecretaryB4427

United Nations Sanctions (South Sudan) Regulation 2019

(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);

assistance (協助) means technical assistance, training or financial or other assistance;

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 16 of Resolution 2206;

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 Part 3;

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

mode of transport (運輸工具) means a ship, aircraft or vehicle;

operator (營運人), in relation to a mode of transport, means the person for the time being having the management of the mode of transport;

pilot in command (機長), in relation to an aircraft, means the pilot designated by the operator or owner, as appropriate, as being—

- (a) in charge of the aircraft (without being under the direction of any other pilot in the aircraft); and
- (b) 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 named in the list published under section 33(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 33(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 2206 (《第2206號決議》) means Resolution 2206 (2015) adopted by the Security Council on 3 March 2015;

responsible person (負責人) means—

- (a) for a ship—the charterer, operator or master of the ship;
- (b) for an aircraft—the charterer, operator or pilot in command of the aircraft; or
- (c) for a vehicle—the operator or driver of the vehicle;

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

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

supply (供應) means supply, sale or transfer.

2. Limited duration of certain provisions

Sections 3, 4, 5, 6, 7, 9, 10 and 11 are in force during the period from the commencement of the United Nations Sanctions (South Sudan) Regulation 2019 until midnight on 31 May 2020.

Part 2

Prohibitions

3. Supply of goods 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 granted under section 9(1)(a), a person must not supply, or agree to supply, directly or indirectly, or do any act likely to promote the supply of, any prohibited goods—
 - (a) to South Sudan; or
 - (b) to a destination for the purpose of delivery or transfer, directly or indirectly, to South Sudan.
- (3) 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.
- (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—
 - (i) to South Sudan; or

- (ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to South Sudan.

4. Carriage of goods prohibited

- (1) This section applies to—
 - (a) a ship that is registered in the HKSAR, or is in the HKSAR;
 - (b) an aircraft that is registered in the HKSAR, or is in the HKSAR;
 - (c) any other ship or aircraft that is for the time being chartered to a Hong Kong person or a person who is in the HKSAR; and
 - (d) a vehicle in the HKSAR.
- (2) Without limiting section 3, except under the authority of a licence granted under section 9(1)(b), a mode of transport must not be used for the carriage of any prohibited goods if the carriage is, or forms part of, a carriage—
 - (a) from a place outside South Sudan to a place in South Sudan; or
 - (b) to a destination for the purpose of delivery or transfer, directly or indirectly, to South Sudan.
- (3) Subsection (2) does not apply if—
 - (a) the carriage of the prohibited goods is performed in the course of the supply of the prohibited goods; and
 - (b) the supply is authorized by a licence granted under section 9(1)(a).

-
- (4) If a mode of transport is used in contravention of subsection (2), each of the following persons commits an offence—
- (a) for a ship registered in the HKSAR—the responsible persons for the ship;
 - (b) for any other ship—
 - (i) the charterer of the ship if the charterer is a Hong Kong person, or is in the HKSAR;
 - (ii) the operator of the ship if the operator is a Hong Kong person, or is in the HKSAR; and
 - (iii) the master of the ship if the master is both a Hong Kong permanent resident and a Chinese national, or is in the HKSAR;
 - (c) for an aircraft registered in the HKSAR—the responsible persons for the aircraft;
 - (d) for any other aircraft—
 - (i) the charterer of the aircraft if the charterer is a Hong Kong person, or is in the HKSAR;
 - (ii) the operator of the aircraft if the operator is a Hong Kong person, or is in the HKSAR; and
 - (iii) the pilot in command of the aircraft if the pilot in command is both a Hong Kong permanent resident and a Chinese national, or is in the HKSAR;
 - (e) for a vehicle—the responsible persons for the vehicle.
- (5) A person who commits an offence under subsection (4) 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.
- (6) 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) that the goods concerned were prohibited goods; or
 - (b) that the carriage of the goods concerned was, or formed part of, a carriage—
 - (i) from a place outside South Sudan to a place in South Sudan; or
 - (ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to South Sudan.

5. Provision of assistance 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 granted under section 10(1), a person must not directly or indirectly provide to a person in South Sudan any assistance (including the provision of armed mercenary personnel) related to—
 - (a) military activities; or
 - (b) the provision, maintenance or use of any prohibited goods.
- (3) 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.
- (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 was, or was to be, provided to a person in South Sudan; or
 - (b) that the assistance related to—
 - (i) military activities; or
 - (ii) the provision, maintenance or use of any prohibited goods.

6. 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 granted under section 11(1)—
 - (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 directly or indirectly owned or controlled 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 directly or indirectly owned or controlled by, the person).
- (3) 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.
- (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) 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 directly or indirectly 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 directly or indirectly 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.

7. 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 South Sudan 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 an individual designated by the Committee for the purposes of paragraph 9 of Resolution 2206.

8. Acts done outside HKSAR with permission granted outside HKSAR not prohibited

This Part does not apply if—

- (a) it otherwise prohibits a person from doing an act in a place outside the HKSAR except under the authority of a licence; and
 - (b) the person does the act in the place with permission granted in accordance with a law in force in the place (being a law substantially corresponding to the relevant provisions of this Regulation).
-

Part 3

Licences

9. Licence for supply or carriage of goods

- (1) If, on application, the Chief Executive is satisfied that one or more of the requirements in subsection (2) are met, the Chief Executive must grant, as appropriate—
 - (a) a licence for the supply of, or the doing of an act likely to promote the supply of, prohibited goods—
 - (i) to South Sudan; or
 - (ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to South Sudan; or
 - (b) a licence for the carriage of prohibited goods that is, or forms part of, a carriage—
 - (i) from a place outside South Sudan to a place in South Sudan; or
 - (ii) to a destination for the purpose of delivery or transfer, directly or indirectly, to South Sudan.
- (2) The requirements are as follows—
 - (a) the prohibited goods are intended solely for the support of or use by United Nations personnel, including the United Nations Mission in the Republic of South Sudan and the United Nations Interim Security Force for Abyei;
 - (b) the prohibited goods are non-lethal military equipment intended solely for humanitarian or protective use;

- (c) the prohibited goods are protective clothing (including flak jackets and military helmets) to be temporarily exported to South Sudan by United Nations personnel, representatives of the media, humanitarian or development workers or associated personnel, for their personal use only;
 - (d) the prohibited goods are to be temporarily exported to South Sudan by the forces of a state which is taking action, in accordance with international law, solely and directly to facilitate the protection or evacuation of its nationals and those for whom it has consular responsibility in South Sudan, as notified to the Committee;
 - (e) the prohibited goods are to be supplied to or in support of the African Union Regional Task Force intended solely for regional operations to counter the Lord's Resistance Army;
 - (f) the prohibited goods are to be supplied solely in support of the implementation of the terms of the peace agreement, as approved in advance by the Committee;
 - (g) the supply of the prohibited goods is approved in advance by the Committee.
- (3) However, if the Chief Executive is satisfied that the requirement in subsection (2)(b) or (e) is met, before granting the licence, the Chief Executive must cause the Committee to be notified of the proposed supply or carriage of the prohibited goods to which the application for the licence relates.

10. Licence for provision of assistance

- (1) If, on application, the Chief Executive is satisfied that one or more of the requirements in subsection (2) are met, the Chief Executive must grant a licence for the provision, to a person in South Sudan, of assistance (including the provision of armed mercenary personnel) related to—
 - (a) military activities; or
 - (b) the provision, maintenance or use of any prohibited goods.
- (2) The requirements are as follows—
 - (a) the assistance is intended solely for the support of or use by United Nations personnel, including the United Nations Mission in the Republic of South Sudan and the United Nations Interim Security Force for Abyei;
 - (b) the assistance is technical assistance or training related to non-lethal military equipment intended solely for humanitarian or protective use;
 - (c) the assistance is technical assistance, technical training, financial assistance or other assistance to be provided to or in support of the African Union Regional Task Force intended solely for regional operations to counter the Lord's Resistance Army;
 - (d) the assistance is technical assistance, technical training, financial assistance or other assistance to be provided solely in support of the implementation of the terms of the peace agreement, as approved in advance by the Committee;
 - (e) the provision of assistance or personnel is approved in advance by the Committee.

- (3) However, if the Chief Executive is satisfied that the requirement in subsection (2)(b) or (c) is met, before granting the licence, the Chief Executive must cause the Committee to be notified of the proposed provision of the assistance to which the application for the licence relates.

11. Licence for making available or dealing with economic assets

- (1) If, on application, the Chief Executive is satisfied 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 directly or indirectly owned or controlled 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 directly or indirectly owned or controlled by, a relevant person or a relevant entity;

-
- (b) the economic assets are necessary for extraordinary expenses;
 - (c) the economic assets are—
 - (i) the subject of a judicial, administrative or arbitral lien or judgment that was entered before 3 March 2015 and is not for the benefit of a relevant person or a relevant entity; and
 - (ii) 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 an individual or entity before the date on which the individual 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) However, if the Chief Executive is satisfied 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 the licence; 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 is satisfied that the requirement in subsection (2)(b) is met, the Chief Executive—
- (a) must cause the Committee to be notified of the intention to grant the licence; and
 - (b) must not, unless the Committee approves, grant the licence.

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

12. 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.
-

Part 4

Enforcement

13. Application of Part 4

This Part applies if an authorized officer has reason to suspect that a mode of transport to which section 4 applies has been, is being or is about to be used in contravention of section 4(2).

14. Power to board and search modes of transport

The authorized officer may—

- (a) either alone or accompanied and assisted by any person acting under the officer's authority, board the mode of transport and search it; and
- (b) for the purposes of paragraph (a), use or authorize the use of reasonable force.

15. Power to require information and production of document, cargo or article

- (1) The authorized officer may require a responsible person for the mode of transport to—
 - (a) provide any information, or produce for inspection any document, relating to the mode of transport, that the officer may specify;
 - (b) for a ship or aircraft—provide any information, or produce for inspection any document, relating to its cargo, that the officer may specify;
 - (c) for a vehicle—provide any information, or produce for inspection any document, relating to any article on it, that the officer may specify; or

- (d) produce for inspection any of its cargo or articles that the officer may specify.
- (2) The power under subsection (1) 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 at which, the information should be provided or the document, cargo or article should be produced for inspection.

16. Power to direct movement

- (1) If the mode of transport is a ship, the authorized officer may do one or more of the following—
 - (a) direct a responsible person for 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 specified;
 - (b) require a responsible person for 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 responsible person is notified by an authorized officer that the ship and its cargo may 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 responsible person is notified by an authorized officer that the ship and its cargo may depart;
 - (iii) if the ship is in another place—
 - (A) to take the ship and any of its cargo to a port specified by an authorized officer; and

- (B) to cause the ship and its cargo to remain in that place until the responsible person 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 by agreement with the responsible person.
- (2) If the mode of transport is an aircraft and the aircraft is in the HKSAR, the authorized officer may require a responsible person for the aircraft to cause the aircraft and any of its cargo to remain in the HKSAR until the responsible person is notified by an authorized officer that the aircraft and its cargo may depart.
- (3) If the mode of transport is a vehicle, the authorized officer may require a responsible person for the vehicle to—
 - (a) take the vehicle and any article on it to a place specified by an authorized officer; and
 - (b) cause the vehicle and the article to remain in that place until the responsible person is notified by an authorized officer that the vehicle and the article may depart.

17. Failure to comply with direction or requirement

- (1) A responsible person for a mode of transport commits an offence if, without reasonable excuse, the person—
 - (a) disobeys a direction given under section 16(1)(a); or
 - (b) refuses or fails to comply with a requirement made under section 15(1) or 16(1)(b), (2) or (3)—
 - (i) within the time specified by an authorized officer; or

(ii) if no time is specified—within a reasonable time.

- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

18. Provision of false or misleading information or documents

- (1) A responsible person for a mode of transport commits an offence if the person, in response to a requirement made under section 15(1)—
- (a) provides or produces to an authorized officer any information or document that the person knows to be false or misleading in a material particular; or
 - (b) recklessly provides or produces to an authorized officer any information or document that is false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

19. Power to enter and detain modes of transport

- (1) Without limiting sections 17 and 18, this section applies if an authorized officer has reason to suspect that a requirement made under section 16(1)(b), (2) or (3) may not be complied with.
- (2) The officer may take any steps that appear to the officer to be necessary to secure compliance with that requirement including, in particular, steps to—
- (a) enter or authorize the entry on any land or the mode of transport concerned;

- (b) detain or authorize the detention of the mode of transport, or of (for a ship or aircraft) any of its cargo or (for a vehicle) any article on it; or
- (c) use or authorize the use of reasonable force.
- (3) Subject to subsections (4) and (5), subsection (2) does not authorize the detention of a ship or vehicle for more than 12 hours, or of an aircraft for more than 6 hours.
- (4) 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, or of an aircraft for further periods of not more than 6 hours each.
- (5) The Commissioner may, by order in writing, authorize the detention of a vehicle for further periods of not more than 12 hours each.
- (6) An order under subsection (4) or (5) must state the time from which, and period for which, the order is effective.

20. Production of proof of identity

Before or on exercising a power conferred by this Part, an authorized officer must, if requested by any person, produce proof of the officer's identity to the person for inspection.

Part 5

Evidence

21. Interpretation of Part 5

In this Part—

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

- (a) any mode of transport or offshore structure; and
- (b) any tent or movable structure;

seized property (被檢取財產) means anything seized under section 22(3).

22. 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.

23. Notice of intended forfeiture

- (1) This section applies if an authorized officer intends to apply to a magistrate or judge under section 25 for an order for forfeiture of any seized property.
- (2) The officer must, within 30 days from the date of the seizure, serve notice of the intention to apply for an order for forfeiture under section 25 on every person who was, to the knowledge of the officer at the time of, or immediately after, the seizure, an owner of the seized property.

- (3) A notice under subsection (2) 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) for a notice that cannot be served in accordance with paragraph (a) or (b)—it 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 seized property.

24. Notice of objection to intended forfeiture

- (1) The following persons may, by serving a notice in writing on the Commissioner, object to a proposed forfeiture of any seized property—
 - (a) an owner, or the authorized agent of an owner, of the seized property referred to in a notice served under section 23(2);
 - (b) a person who was in possession of the seized property at the time of seizure;
 - (c) a person who has a legal or equitable interest in the seized property.
- (2) A notice under subsection (1)—
 - (a) must be served on the Commissioner by a person referred to in subsection (1)(a), (b) or (c) (*claimant*) within 30 days from—
 - (i) if the notice under section 23(2) is delivered personally to the person named in the notice—the date of delivery;

- (ii) if the notice is sent by registered post—2 days after the date of posting; or
 - (iii) if the notice is exhibited as described in section 23(3)(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—
 - (i) qualified to practise under the Legal Practitioners Ordinance (Cap. 159); and
 - (ii) authorized to accept service on behalf of the claimant in relation to any forfeiture proceedings.

25. Application for order for forfeiture

An authorized officer may apply to a magistrate or judge for an order for forfeiture of any seized property in respect of which a notice has been served under section 23(2) after the expiration of the appropriate period of time specified in section 24(2)(a) for the serving of a notice of objection.

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

- (1) This section applies if an application is made to a magistrate or judge for an order for forfeiture of any seized property.
- (2) If satisfied that—
 - (a) the seized property is a document relating to the provision, maintenance or use of any prohibited goods; or

- (b) the seized property is prohibited goods,
the magistrate or judge may make the order that the magistrate or judge considers appropriate for the forfeiture of the seized property and its subsequent destruction or disposal.
- (3) An order under subsection (2) may be made in respect of any seized property whether or not any person has been convicted of any offence in connection with the seized property.
- (4) Before making an order for forfeiture of any seized property, the magistrate or judge must issue a summons to any person who serves a notice under section 24(1) to appear on a day specified in the summons to show cause why the seized property should not be forfeited.
- (5) If any summons issued under subsection (4) 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 subsection (2) despite the fact that the summons has not been served on the person.

27. Detention of seized property

- (1) Subject to any order made under section 26, 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.
-

Part 6

Disclosure of Information or Documents

28. 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 South Sudan decided on by the Security Council; or
 - (d) the information or document is disclosed with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Regulation.

- (2) For the purposes of subsection (1)(a)—
- (a) a person may 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.
-

Part 7

Other Offences and Miscellaneous Matters

29. 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.

30. 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.

31. 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.

32. Consent and deadline for prosecution

- (1) A prosecution for an offence under this Regulation may only be started by or with the consent of the Secretary for Justice.
- (2) A prosecution for a summary offence under this Regulation that is alleged to have been committed by a person outside the HKSAR may only be started before the end of 12 months beginning on the date on which the person first enters the HKSAR after the alleged commission of the offence.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

- (3) In this section—

summary offence (簡易程序罪行) means an offence triable summarily only.

33. 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 12 of Resolution 2206.
- (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 is no longer designated by the Committee for the purposes of paragraph 12 of Resolution 2206.
- (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.

34. 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 subdelegate 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.

35. 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.
- (2) A delegation under subsection (1) may be subject to any restriction or condition the Secretary considers appropriate.

Matthew CHEUNG Kin-chung
Acting Chief Executive

22 October 2019

Explanatory Note

This Regulation gives effect to certain decisions in Resolution 2471 (2019) adopted by the Security Council of the United Nations on 30 May 2019 in respect of South Sudan by providing for the prohibition against—

- (a) the supply, sale, transfer or carriage of arms or related materiel to South Sudan;
- (b) the provision of technical assistance, training or financial or other assistance related to military activities 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.