



Charter of the United Nations (Dealing with Assets) Regulations 2008¹

Select Legislative Instrument 2008 No. 29

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Charter of the United Nations Act 1945*.

Dated 20 March 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

STEPHEN SMITH
Minister for Foreign Affairs

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.

2 Commencement

These Regulations commence immediately after the commencement of Schedule 1 to the *International Trade Integrity Act 2007*.

3 Repeal

The *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002* are repealed.

4 Definitions

In these Regulations:

Act means the *Charter of the United Nations Act 1945*.

AFP means the Australian Federal Police constituted by section 6 of the *Australian Federal Police Act 1979*.

controlled asset means:

- (a) a freezable asset; or
- (b) a controlled asset as defined in any of the Sanctions Regulations.

designated person or entity means:

- (a) a proscribed person or entity; or
- (b) a designated person or entity as defined in any of the Sanctions Regulations.

Resolution 1373 means Resolution 1373 (2001) of the Security Council of the United Nations.

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Sanctions Regulations means any of the following:

- (a) the *Charter of the United Nations (Sanctions — Afghanistan) Regulations 2001*;
- (b) the *Charter of the United Nations (Sanctions — Cote d'Ivoire) Regulations 2005*;
- (c) the *Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2008*;
- (d) the *Charter of the United Nations (Sanctions — Democratic Republic of Congo) Regulations 2005*;
- (e) the *Charter of the United Nations (Sanctions — Iran) Regulations 2008*;
- (f) the *Charter of the United Nations (Sanctions — Iraq) Regulations 2006*;
- (g) the *Charter of the United Nations (Sanctions — Lebanon) Regulations 2006*;
- (h) the *Charter of the United Nations (Sanctions — Liberia) Regulations 2002*;
- (i) the *Charter of the United Nations (Sanctions — Rwanda) Regulations 2006*;
- (j) the *Charter of the United Nations (Sanctions — Sierra Leone) Regulations 1997*;
- (k) the *Charter of the United Nations (Sanctions — Somalia) Regulations 2006*;
- (l) the *Charter of the United Nations (Sanctions — Sudan) Regulations 2005*;
- (m) these Regulations.

Note For these Regulations:

- (a) the ***Department*** is the Department of Foreign Affairs and Trade and the ***Minister*** is the Minister for Foreign Affairs; and
- (b) the following terms are defined in the Act:
 - ***asset*** (section 2);
 - ***freezable asset*** (section 14);
 - ***proscribed person or entity*** (section 14).

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5 Permissible dealings for sanctions regulations

- (1) This regulation defines various permissible dealings for the Sanctions Regulations.
- (2) If a set of Sanctions Regulations adopts any of subsections (3) to (7):
 - (a) a reference in the subsection to a designated person or entity is a reference to a designated person or entity as defined in those Regulations; and
 - (b) a reference in the subsection to a controlled asset is a reference to a controlled asset as defined in those Regulations.
- (3) A dealing constituted by:
 - (a) a payment to a designated person or entity, or a payment to a person or entity acting on behalf of, or at the direction of a designated person or entity; or
 - (b) a use or dealing with a controlled asset;
is a ***basic expense dealing*** if it is necessary for basic expenses, including the following:
 - (c) foodstuffs;
 - (d) rent or mortgage;
 - (e) medicines or medical treatment;
 - (f) taxes;
 - (g) insurance premiums;
 - (h) public utility charges;
 - (i) reasonable professional fees;
 - (j) reimbursement of expenses associated with the provision of legal services;
 - (k) fees or service charges that are in accordance with national laws for the routine holding or maintenance of frozen assets.
- (4) A dealing constituted by:
 - (a) a payment to a designated person or entity, or a payment to a person or entity acting on behalf of, or at the direction of a designated person or entity; or
 - (b) a use or dealing with a controlled asset;

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is a **legally required dealing** if:

- (c) it is necessary to satisfy a judicial, administrative or arbitral lien or judgement that was made prior to the date on which the person or entity became a designated person or entity; and
- (d) it is not for the benefit of a designated person or entity.

(5) A dealing constituted by:

- (a) a payment to a designated person or entity, or a payment to a person or entity acting on behalf of, or at the direction of a designated person or entity; or
- (b) a use or dealing with a controlled asset;

is a **contractual dealing** if it is a payment:

- (c) to apply interest or other earnings due on accounts holding controlled assets; or
- (d) required under contracts, agreements or obligations made before the date on which those accounts became accounts holding controlled assets.

Note If the account into which the payment is paid is frozen under Sanctions Regulations, this payment will also be frozen once received.

(6) A dealing constituted by:

- (a) a payment by a designated person or entity, or a payment by a person or entity acting on behalf of, or at the direction of a designated person or entity;

is a **required payment dealing** if:

- (b) the payment is required under a contract made before the person or entity became a designated person or entity; and
- (c) the payment is not directly or indirectly being received by a designated person or entity.

(7) Any other dealing constituted by:

- (a) a payment to a designated person or entity, or a payment to a person or entity acting on behalf of, or at the direction of a designated person or entity; or
- (b) a use or dealing with a controlled asset;

is an **extraordinary expense dealing**.

Part 2 **Grounds for listing persons, entities or assets**

20 Listing for Resolution 1373

- (1) For subsection 15 (2) of the Act, the Minister must list a person or entity if the Minister is satisfied that the person or entity is a person or entity mentioned in paragraph 1 (c) of Resolution 1373.
- (2) For subsection 15 (4) of the Act, the Minister may list an asset, or class of asset, if the Minister is satisfied that the asset, or class of asset, is owned or controlled by a person or entity mentioned in paragraph 1 (c) of Resolution 1373.

Note Paragraph 1 (c) of Resolution 1373 requires States to:

‘Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;’.

21 Advance notice of listing of persons, entities and assets

- (1) The Department may give notice of decisions of the Minister to list a person or entity, or an asset or class of asset, under section 15 of the Act to any person who is engaged in the business of holding, dealing in, or facilitating dealing in, assets.
- (2) The notice may be given before notice of the listing that is the subject of the decisions is published in the *Gazette*.

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Part 3 Authorised dealings**30 Definitions for Part 3**

- (1) In this Part, a dealing constituted by:
- (a) a payment to a proscribed person or entity, or a payment to a person or entity acting on behalf of, or at the direction of a proscribed person or entity; or
 - (b) a use or dealing with a freezable asset;
is ***basic expense dealing*** if it is necessary for basic expenses, including the following:
 - (c) foodstuffs;
 - (d) rent or mortgage;
 - (e) medicines or medical treatment;
 - (f) taxes;
 - (g) insurance premiums;
 - (h) public utility charges;
 - (i) reasonable professional fees;
 - (j) reimbursement of expenses associated with the provision of legal services;
 - (k) fees or service charges that are in accordance with national laws for the routine holding or maintenance of frozen assets.
- (2) In this Part a dealing constituted by:
- (a) a payment to a proscribed person or entity, or a payment to a person or entity acting on behalf of, or at the direction of a proscribed person or entity; or
 - (b) a use or dealing with a freezable asset;
is a ***contractual dealing*** if it is a payment:
 - (c) to apply interest or other earnings due on accounts holding freezable assets; or

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- (d) required under contracts, agreements or obligations made before the date on which those accounts became accounts holding freezable assets.

Note If the account into which the payment is paid is frozen under Sanctions Regulations, this payment will also be frozen once received.

- (3) In this Part any other dealing constituted by:
- (a) a payment to a proscribed person or entity, or a payment to a person or entity acting on behalf of, or at the direction of a proscribed person or entity; or
 - (b) a use or dealing with a freezable asset;
is an *extraordinary expense dealing*.

31 Authorised dealings

- (1) When an application has been made under section 22 of the Act in relation to a use of or dealing with a freezable asset, the Minister may authorise the use or dealing if it is a basic expense dealing, a contractual dealing or an extraordinary expense dealing.
- (2) An application must specify which kind of dealing mentioned in subregulation (2) the application is for.

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Part 4 Miscellaneous**40 Consolidated list of entities, persons and assets**

- (1) The Department must maintain a document that sets out:
 - (a) all persons and entities that are currently designated persons or entities; and
 - (b) all assets or classes of assets currently listed under section 15 of the Act.
- (2) The Department must ensure that an electronic version of the document is made available to the public on the internet.

41 Request to AFP for help

- (1) A person who holds an asset that the person suspects is, or may be, a controlled asset may request the AFP to help the person determine whether or not the asset is owned or controlled by a designated person or entity.
- (2) The request must be accompanied by details of the asset, and as much information about the asset (including information about the owner or controller of the asset) as is known to the person making the request.
- (3) The AFP must use its best endeavours to help a person who has made a request under subregulation (1).
- (4) As soon as practicable after receiving a request under subregulation (1), the AFP must respond in writing.
- (5) The response must state whether the AFP considers that:
 - (a) it is likely that the asset is owned or controlled by a designated person or entity; or
 - (b) it is unlikely that the asset is owned or controlled by a designated person or entity; or

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- (c) it is unknown whether the asset is owned or controlled by a designated person or entity.

Note These Regulations do not limit the obligation of:

- (a) a cash dealer under section 16 of the *Financial Transaction Reports Act 1988* to report a suspicious transaction; or
- (b) a reporting entity under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

42 Notification

- (1) This regulation sets out what a person who is holding an asset must do if the person forms an opinion (a *notifiable opinion*) that:
 - (a) the asset is a controlled asset; or
 - (b) the asset, having been a controlled asset, or having been previously treated by the person as a controlled asset, is not, or is no longer, a controlled asset.
- (2) Paragraph (1) (b) does not apply if:
 - (a) the asset has been removed from the list mentioned in regulation 40; or
 - (b) all designated persons associated with the asset have been removed from the list.
- (3) As soon as practicable after a person forms a notifiable opinion, the person must inform the AFP of:
 - (a) the asset about which the opinion was formed; and
 - (b) as much information about the asset (including information about the owner or controller of the asset) as is known to the person; and
 - (c) the reasons for the opinion.

43 Protection of information

- (1) This regulation applies to a person who, at the time that something is done under the Act or these Regulations (a *relevant action*), is:
 - (a) the Minister; or
 - (b) the Secretary of the Department; or
 - (c) an officer of the Commonwealth; or

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- (d) an AFP employee, or a member of the Australian Federal Police, within the meaning of the *Australian Federal Police Act 1979*; or
 - (e) a person who holds a controlled asset or an asset that the person suspects may be a controlled asset; or
 - (f) a person employed by a person mentioned in paragraph (e).
- (2) A person to whom this regulation applies is not required:
- (a) to produce in a court any document that has come into the custody or control of the person in the course of, or because of, the relevant action; or
 - (b) to divulge or communicate to a court any matter or thing that has come to the notice of the person in the course of, or because of, the relevant action;
- unless it is necessary to do so to comply with the Act or these Regulations.

44 Indemnity

A person (including the Commonwealth) is not liable to an action, suit or proceeding for anything done or omitted to be done in good faith and without negligence under regulation 41 or 42.

Note Section 24 of the Act is an indemnity for anything done or omitted to be done in compliance or purported compliance with the Act.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.