



Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2008¹

Select Legislative Instrument 2008 No. 30

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 (Sanctions — Democratic People's Republic of Korea) 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The *Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2006* are repealed.

4 Definitions

In these Regulations:

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

Australian aircraft has the same meaning as in the *Criminal Code*.

Australian ship has the same meaning as in the *Criminal Code*.

Committee means the Committee established by paragraph 12 of Resolution 1718.

controlled asset means an asset that is owned or controlled by:

- (a) a designated person or entity; or
- (b) a person or entity acting on behalf of or at the direction of a designated person or entity.

designated person or entity means a person or entity designated by the Committee or by the Security Council for paragraph 8 (d) of Resolution 1718.

Regulation 5

export sanctioned goods has the meaning given by regulation 5.

goods include items, materials, equipment and technology.

import sanctioned goods has the meaning given by regulation 7.

military goods includes:

- (a) any of the following kinds of equipment, as defined for the purposes of the United Nations Register on Conventional Arms:
 - (i) battle tanks;
 - (ii) armoured combat vehicles;
 - (iii) large calibre artillery systems;
 - (iv) combat aircraft;
 - (v) attack helicopters;
 - (vi) warships;
 - (vii) missiles or missile systems; and
- (b) matériel related to any of the equipment mentioned in paragraph (a), including spare parts; and
- (c) items determined by the Security Council or the Committee for the purpose of subparagraph 8 (a) (i) of Resolution 1718.

Resolution 1718 means Resolution 1718 (2006) of the Security Council, adopted on 14 October 2006.

sanctioned service has the meaning given in regulation 8.

sanctioned supply has the meaning given in regulation 6.

Security Council means the United Nations Security Council.

Note In these Regulations:

- (a) the *Department* is the Department of Foreign Affairs and Trade; and
- (b) the *Minister* is the Minister for Foreign Affairs; and
- (c) *asset* has the meaning given in section 2 of the Act.

5 Export sanctioned goods

- (1) For these Regulations, the following, whether or not they originate in Australia, are *export sanctioned goods*:
 - (a) military goods;

Regulation 7

- (b) goods mentioned in the luxury goods list;
 - (c) goods mentioned in Security Council documents S/2006/814, S/2006/815 and S/2006/853;
 - (d) goods that have been determined by the Security Council or the Committee for subparagraph 8 (a) (ii) of Resolution 1718.
- (2) The Minister may, by legislative instrument, determine a luxury goods list for paragraph (1) (b).

6 Sanctioned supply

A person makes a *sanctioned supply* if:

- (a) the person supplies, sells or transfers goods to another person; and
- (b) the goods are export sanctioned goods; and
- (c) as a direct or indirect result of the supply, sale or transfer the goods are transferred to the Democratic People's Republic of Korea, or are incorporated into goods that are transferred to the Democratic People's Republic of Korea.

7 Import sanctioned goods

For these Regulations, the following, whether or not they originate in the Democratic People's Republic of Korea, are *import sanctioned goods*:

- (a) military goods;
- (b) goods mentioned in Security Council documents S/2006/814, S/2006/815 and S/2006/853;
- (c) goods that have been determined by the Security Council or the Committee for subparagraph 8 (a) (ii) of Resolution 1718.

Regulation 8

8 Sanctioned service

For these Regulations, each of the following is a provision of a *sanctioned service*:

- (a) the provision to any person of technical training, advice, services or assistance, if it assists with, or is provided in relation to, a supply of the goods mentioned in paragraphs 5 (1) (a), (c) and (d);
- (b) the provision to any person of technical training, advice, services or assistance, if it assists with the manufacture, maintenance or use of the goods mentioned in paragraphs 5 (1) (a), (c) and (d);
- (c) the transportation of goods:
 - (i) that are the subject of a sanctioned supply; or
 - (ii) that are import sanctioned goods in the course of being procured from the Democratic People's Republic of Korea or from a person or entity in the Democratic People's Republic of Korea.

Part 2 UN sanction enforcement laws

9 Prohibitions relating to a sanctioned supply

- (1) This regulation is a UN sanction enforcement law.

Note This has the effect that a contravention of a provision of this regulation is an offence under section 27 of the Act.

- (2) A person contravenes this regulation if the person makes a sanctioned supply.
- (3) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (2).

Note This has the effect that the offence has extraterritorial operation.

- (4) A person, whether or not in Australia, and whether or not an Australian citizen, contravenes this regulation if the person uses the services of an Australian ship or an Australian aircraft to transport export sanctioned goods in the course of, or for the purpose of, making a sanctioned supply.
- (5) A body corporate contravenes this regulation if:
- (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - (b) the other body corporate or entity makes a sanctioned supply.

10 Prohibitions relating to import sanctioned goods

- (1) This regulation is a UN sanction enforcement law.

Note This has the effect that a contravention of a provision of this regulation is an offence under section 27 of the Act.

- (2) A person contravenes this regulation if the person procures import sanctioned goods from the Democratic People's Republic of Korea or from a person or entity in the Democratic People's Republic of Korea.

Regulation 11

- (3) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (2).

Note This has the effect that the offence has extraterritorial operation.

- (4) A person, whether or not in Australia, and whether or not an Australian citizen, contravenes this regulation if the person uses the services of an Australian ship or an Australian aircraft to transport import sanctioned goods in the course of, or for the purpose of, procuring the goods from the Democratic People's Republic of Korea or from a person or entity in the Democratic People's Republic of Korea.
- (5) A body corporate contravenes this regulation if:
- (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - (b) the other body corporate or entity procures import sanctioned goods from the Democratic People's Republic of Korea or a person or entity in the Democratic People's Republic of Korea.

11 Prohibitions relating to sanctioned services

- (1) This regulation is a UN sanction enforcement law.

Note This has the effect that a contravention of a provision of this regulation is an offence under section 27 of the Act.

- (2) A person contravenes this regulation if the person provides a sanctioned service.
- (3) A person contravenes this regulation if the person procures a sanctioned service from:
- (a) the Democratic People's Republic of Korea; or
 - (b) a person in the Democratic People's Republic of Korea; or
 - (c) a national of the Democratic People's Republic of Korea.
- (4) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (2) or (3).

Note This has the effect that the offence has extraterritorial operation.

Regulation 12

- (5) A body corporate contravenes this regulation if:
- (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - (b) the other body corporate or entity:
 - (i) provides a sanctioned service; or
 - (ii) procures a sanctioned service from:
 - (A) the Democratic People's Republic of Korea; or
 - (B) a person in the Democratic People's Republic of Korea; or
 - (C) a national of the Democratic People's Republic of Korea.

12 Prohibition relating to dealings with designated person or entity

- (1) This regulation is a UN sanction enforcement law.

Note This has the effect that a contravention of a provision of this regulation is an offence under section 27 of the Act.

- (2) A person contravenes this regulation if:
- (a) the person directly or indirectly makes an asset available to, or for the benefit of:
 - (i) a designated person or entity; or
 - (ii) a person or entity acting on behalf of or at the direction of a designated person or entity; and
 - (b) the making available of the asset is not authorised by a permit under regulation 14.
- (3) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (2).

Note This has the effect that the offence has extraterritorial operation.

Regulation 13

13 Prohibition relating to controlled assets

- (1) This regulation is a UN sanction enforcement law.

Note This has the effect that a contravention of a provision of this regulation is an offence under section 27 of the Act.

- (2) A person contravenes this regulation if:
- (a) the person holds a controlled asset; and
 - (b) the person:
 - (i) uses or deal with the asset; or
 - (ii) allows the asset to be used or dealt with; or
 - (iii) facilitates the use of the asset or dealing with the asset; and
 - (c) the use or dealing is not authorised by a permit under regulation 14.
- (3) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (2).

Note This has the effect that the offence has extraterritorial operation.

14 Permit for assets and controlled assets

- (1) The Minister may, on application, grant a person a permit authorising:
- (a) the making available of an asset to a person or entity that would otherwise contravene subregulation 12 (2); or
 - (b) a use of, or dealing with, a controlled asset.

Note Section 13A of the Act applies to a permit granted by the Minister under this subregulation.

- (2) A permit is subject to any conditions specified in the permit.
- (3) An application must be for a basic expense dealing, a legally required dealing or an extraordinary expense dealing mentioned in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.
- (4) An application must specify which kind of dealing mentioned in subregulation (3) the application is for.

Regulation 14

- (5) If the application is for a basic expense dealing, the Minister:
- (a) must notify the Committee of the application; and
 - (b) may grant a permit only if 5 working days have passed since the notice was given, and the Committee has not advised against granting a permit to the applicant.
- (6) If the application is for a legally required dealing, the Minister must notify the Committee of the application before granting a permit.
- (7) If the application is for an extraordinary expense dealing, the Minister:
- (a) must notify the Committee of the application; and
 - (b) may grant a permit only with the approval of the Committee.

Note Part 2 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* applies to these Regulations.

Regulation 15

Part 3 Miscellaneous**15 Delegations by Minister**

- (1) The Minister may delegate the Minister's powers and functions under these Regulations (other than this power of delegation) to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) The delegation must be in writing.
- (3) The delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.

16 Transitional

The *Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Luxury Goods List 2006* is maintained in existence and is taken to have been made under subregulation 5 (2).

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>.