



Charter of the United Nations (Sanctions — Iran) Regulations 2008¹

Select Legislative Instrument 2008 No. 31

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 — Iran) 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The *Charter of the United Nations (Sanctions — Iran) Regulations 2007* are repealed.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 18 of Resolution 1737.

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; or
- (c) an entity owned or controlled by a designated person or entity, including through illicit means.

designated person or entity means a person or entity:

- (a) designated in the Annex to Resolution 1737; or

Regulation 5

- (b) designated by the Committee or by the Security Council for paragraph 12 of Resolution 1737.

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 6.

permissible goods has the meaning given by regulation 9.

Resolution 1737 means Resolution 1737 (2006) of the Security Council, adopted on 23 December 2006.

sanctioned service has the meaning given in regulation 8.

sanctioned supply has the meaning given in regulation 7.

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 are *export sanctioned goods*:
 - (a) goods mentioned in Security Council documents S/2006/814 and S/2006/815;
 - (b) goods that have been determined by the Security Council or the Committee for paragraph 3 (d) of Resolution 1737;
 - (c) goods specified in a determination under this regulation.
- (2) If the Minister is satisfied that specified goods would, if supplied to Iran, contribute to:
 - (a) enrichment-related, reprocessing or heavy water-related activities; or
 - (b) the development of nuclear weapon delivery systems; or

Regulation 6

- (c) the pursuit of activities about which the International Atomic Energy Agency has expressed concern or identified as outstanding;

the Minister may, by legislative instrument, determine that the goods are export sanctioned goods.

6 Import sanctioned goods

- (1) For these Regulations, the following, whether or not they originate in Iran, are *import sanctioned goods*:

- (a) goods mentioned in Security Council documents S/2006/814 and S/2006/815;
- (b) arms or related matériel.

- (2) In this regulation:

arms or related matériel includes:

- (a) weapons; and
- (b) ammunition; and
- (c) military vehicles and equipment; and
- (d) spare parts and accessories for the things mentioned in paragraphs (a) to (c); and
- (e) paramilitary equipment.

paramilitary equipment means any of the following:

- (a) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes;
- (b) body armour, including:
- (i) bullet-resistant apparel; and
- (ii) bullet-resistant pads; and
- (iii) protective helmets;
- (c) handcuffs, leg-irons and other devices used for restraining prisoners;
- (d) riot protection shields;
- (e) whips;
- (f) parts and accessories designed or adapted for use in, or with, equipment mentioned in paragraphs (a) to (e).

Regulation 7

7 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 Iran, or are incorporated into goods that are transferred to Iran.

8 Sanctioned service

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

- (a) the provision to any person of:
 - (i) technical assistance or training; or
 - (ii) financial assistance; or
 - (iii) investment, brokering or other financial services;if it assists with, or is provided in relation to, a sanctioned supply;
- (b) the provision to any person of:
 - (i) technical assistance or training; or
 - (ii) financial assistance; or
 - (iii) investment, brokering or other financial services;if it assists with the manufacture or use of export sanctioned goods in Iran or on behalf of a person or entity in Iran;
- (c) the transfer of financial resources, if it relates to:
 - (i) a sanctioned supply; or
 - (ii) the manufacture or use of export sanctioned goods in Iran, or by an Iranian national;
- (d) 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 Iran or from a person or entity in Iran.

Regulation 9

9 Permissible goods

For these Regulations, the following are *permissible goods*:

- (a) goods mentioned in B.1 of INFCIRC/254/Rev.8/Part 1 in Security Council document S/2006/814 — provided that the goods are for light water reactors;
- (b) low-enriched uranium mentioned in A.1.2 of INFCIRC/254/Rev.8/Part 1 in Security Council document S/2006/814 — provided that the low-enriched uranium is incorporated in assembled nuclear fuel elements for light water reactors;
- (c) goods mentioned in the Annex to INFCIRC/254/Rev.7/Part 2 of Security Council document S/2006/814 – provided that the goods are:
 - (i) for exclusive use in light water reactors; and
 - (ii) necessary for technical cooperation provided to Iran by the International Atomic Energy Agency or under the Agency's auspices as mentioned in paragraph 16 of Resolution 1737.

Regulation 10

Part 2 UN sanction enforcement laws**10 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:

- (a) the person makes a sanctioned supply; and
- (b) the sanctioned supply is not an authorised 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 that is not an authorised 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; and
- (c) the sanctioned supply is not an authorised supply.

- (6) For this regulation:

authorised supply means a sanctioned supply that is authorised by:

- (a) a permit under regulation 11; or

Regulation 11

- (b) if the supply, sale or transfer takes place in or from a foreign country — a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and
 - (iii) granted in a way that accords with the foreign country's obligations under Resolution 1737.
- (7) A defendant, to a charge under section 27 of the Act that relates to subregulation (2), (4) or (5), bears an evidential burden in relation to the matter in subparagraph (b) (i) of the definition of authorised supply in subregulation (6).
- (8) For paragraph (b) of the definition of authorised supply in subregulation (6), a permit is taken not to have been properly granted if the prosecution shows that the permit was granted on the basis of false or misleading information provided by any person, or of corrupt conduct by any person.

11 Permit to make a sanctioned supply

- (1) The Minister may, on application, grant a person a permit authorising the making of a sanctioned supply of goods if:
 - (a) the goods are permissible goods; or
 - (b) all of the following apply:
 - (i) the contract for delivery of the goods includes appropriate end-user guarantees;
 - (ii) the Minister has obtained a commitment from the Government of Iran not to use the goods in the proliferation of sensitive nuclear activities or for the development of nuclear weapon delivery systems;
 - (iii) the Minister has obtained from the Committee a determination in advance under paragraph 9 of Resolution 1737 that the goods would clearly not contribute to the development of Iran's technologies in support of its proliferation of sensitive nuclear activities or the development of nuclear weapon delivery systems.

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

Regulation 12

- (2) The Minister must not grant a permit unless satisfied that:
 - (a) the requirements of the Guidelines in Security Council documents S/2006/814 and S/2006/985 have been met; and
 - (b) Australia has obtained a right to verify the end-use and end-use location for any goods that are supplied, sold or transferred; and
 - (c) Australia is in a position to exercise that right effectively; and
 - (d) the Security Council or the Committee has not prohibited the sale, supply or transfer of the goods to Iran; and
 - (e) for goods mentioned in sections 3 to 6 of the Annex to INFIRC/254/Rev.7/Part 2 of Security Council document S/2006/814 — the Minister has notified the Committee of the supply in advance.
- (3) A permit is subject to any conditions specified in the permit.
- (4) The Minister must take steps to ensure that, within 10 days after the supply, sale or transfer takes place, notification is given to:
 - (a) the Committee; and
 - (b) for goods mentioned in Security Council document S/2006/814 — the International Atomic Energy Agency.

12 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 Iran or from a person or entity in Iran.
- (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

- (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 Iran or from a person or entity in Iran.
- (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 Iran or a person or entity in Iran.

13 Prohibitions relating to the provision of 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:
 - (a) the person provides a sanctioned service; and
 - (b) it is not an authorised service; and
 - (c) it is not provided in relation to an authorised 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 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 provides a sanctioned service; and
 - (c) the sanctioned service is not an authorised service; and
 - (d) the sanctioned service is not provided in relation to an authorised supply.

Regulation 13

(5) For this regulation:

authorised service means a sanctioned service that is authorised by:

- (a) a permit under regulation 14; or
- (b) if the service is provided in a foreign country — a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and
 - (iii) granted in a way that accords with the foreign country's obligations under Resolution 1737.

authorised supply means a sanctioned supply that is authorised by:

- (a) a permit under regulation 11; or
- (b) if the supply, sale or transfer takes place in or from a foreign country — a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and
 - (iii) granted in a way that accords with the foreign country's obligations under Resolution 1737.

(6) A defendant, to a charge under section 27 of the Act that relates to subregulation (2) or (4), bears an evidential burden in relation to:

- (a) the matter in subparagraph (b) (i) of the definition of authorised service in subregulation (5); and
- (b) the matter in subparagraph (b) (i) of the definition of authorised supply in subregulation (5).

(7) For paragraph (b) of the definitions of authorised service and of authorised supply in subregulation (5), a permit is taken not to have been properly granted if the prosecution shows that the permit was granted on the basis of false or misleading information provided by any person, or of corrupt conduct by any person.

Regulation 15

14 Permit to provide a sanctioned service

- (1) The Minister may, on application, grant a person a permit authorising the provision of a sanctioned service if:
 - (a) the service relates to goods that are permissible goods; or
 - (b) all of the following apply:
 - (i) the contract for delivery of the service includes appropriate end-user guarantees;
 - (ii) the Minister has obtained a commitment from the Government of Iran not to use the service in the proliferation of sensitive nuclear activities or for the development of nuclear weapon delivery systems;
 - (iii) the Minister has obtained from the Committee a determination in advance under paragraph 9 of Resolution 1737 that the service would clearly not contribute to the development of Iran's technologies in support of its proliferation of sensitive nuclear activities or the development of nuclear weapon delivery systems.

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

- (2) The Minister must not grant a permit unless satisfied that the requirements of the Guidelines in Security Council documents S/2006/814 and S/2006/985 have been met in relation to the sanctioned service.
- (3) A permit is subject to any conditions specified in the permit.

15 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

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- (ii) a person or entity acting on behalf of or at the direction of a designated person or entity; or
 - (iii) an entity owned or controlled by a designated person or entity, including through illicit means; and
- (b) the making available of the asset is not authorised by a permit under regulation 17.
- (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.

16 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 deals with the asset; or
 - (ii) allows the asset to be used or dealt with; or
 - (iii) facilitates the use of, or the dealing with, the asset; and
 - (c) the use or dealing is not authorised by a permit under regulation 17.
- (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.

17 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 15 (2); or

Regulation 17

(b) a use of, or a 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) a use or dealing that relates to:
- (i) a sanctioned supply authorised by a permit under regulation 11; or
- (ii) a sanctioned service authorised by a permit under regulation 14;
- where the supply or service relates directly to goods mentioned in paragraphs 9 (a) and (b) (a *permissible nuclear dealing*); or
- (b) a basic expense dealing, a legally required dealing, a contractual dealing, a required payment 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.
- (5) If the application is for a permissible nuclear dealing, the Minister must notify the Committee of the application before granting a permit.
- (6) 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 notification was given, and the Committee has not advised against granting a permit to the applicant.
- (7) If the application is for a legally required dealing, the Minister must notify the Committee of the application before granting a permit.

Regulation 17

- (8) If the application is for a required payment dealing:
- (a) the dealing must not relate to a sanctioned supply, a sanctioned service or a procurement of import sanctioned goods from Iran or from a person or entity in Iran (except as permitted under paragraph (3) (a)); and
 - (b) the Minister:
 - (i) must notify the Committee of the application; and
 - (ii) may grant a permit only if 10 working days have passed since notification was given.
- (9) 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.

Part 3 **Miscellaneous**

18 **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.

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>.