



Charter of the United Nations (Sanctions — Somalia) Regulations 2008

Select Legislative Instrument 2008 No. 50 as amended

made under the

Charter of the United Nations Act 1945

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Part 1 Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *Charter of the United Nations (Sanctions — Somalia) Regulations 2008*.

2 Commencement [see Note 1]

These Regulations commence on the day after they are registered.

3 Repeal

The *Charter of the United Nations (Sanctions — Somalia) Regulations 2006* are repealed.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 under paragraph 11 of Resolution 751.

controlled asset means an asset that is owned or controlled by a designated person or entity.

designated person or entity means a person or entity designated by the Committee or by the Security Council of the United Nations for paragraph 8 of Resolution 1844.

export sanctioned goods has the meaning given by regulation 5.

import sanctioned goods has the meaning given by regulation 7A.

paramilitary equipment means any of the following:

Regulation 4

- (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).

prohibited service to a designated person or entity has the meaning given by regulation 6A.

prohibited supply to a designated person or entity has the meaning given by regulation 5A.

protective clothing includes flak jackets and military helmets.

Resolution 733 means Resolution 733 (1992) of the Security Council of the United Nations, adopted on 23 January 1992.

Resolution 751 means Resolution 751 (1992) of the Security Council of the United Nations, adopted on 24 April 1992.

Resolution 1356 means Resolution 1356 (2001) of the Security Council of the United Nations, adopted on 19 June 2001.

Resolution 1425 means Resolution 1425 (2002) of the Security Council of the United Nations, adopted on 22 July 2002.

Resolution 1744 means Resolution 1744 (2007) of the Security Council of the United Nations, adopted on 20 February 2007.

Resolution 1844 means Resolution 1844 (2008) of the Security Council of the United Nations, adopted on 20 November 2008.

Resolution 1846 means Resolution 1846 (2008) of the Security Council of the United Nations, adopted on 2 December 2008.

Resolution 1851 means Resolution 1851 (2008) of the Security Council of the United Nations, adopted on 16 December 2008.

Resolution 1916 means Resolution 1916 (2010) of the Security Council of the United Nations, adopted on 19 March 2010.

Regulation 6

sanctioned service has the meaning given in regulation 7.

sanctioned supply has the meaning given in regulation 6.

weapons and military equipment 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.

working day means a day that is not a Saturday, Sunday or public holiday.

5 Export sanctioned goods

For these Regulations, *export sanctioned goods* means weapons and military equipment.

5A Prohibited supply to designated person or entity

For these Regulations a person makes a *prohibited supply to a designated person or entity* if the person supplies, sells or transfers export sanctioned goods:

- (a) to a designated person or entity; or
- (b) to a person who is not a designated person or entity and as a direct or indirect result of that supply, sale or transfer, the goods are transferred to a designated person or entity.

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 Somalia.

Regulation 6A

6A Prohibited service to designated person or entity

For these Regulations, *prohibited service to a designated person or entity* means the direct or indirect provision to a designated person or entity of technical assistance or training, or financial or other assistance, including investment, brokering or other financial services, related:

- (a) to military activities; or
- (b) to the supply, sale, transfer, manufacture, maintenance or use of export sanctioned goods.

7 Sanctioned service

For these Regulations, *sanctioned service* means the direct or indirect provision to Somalia of:

- (a) financing for the acquisition or delivery of export sanctioned goods; or
- (b) technical advice or training, or financial or other assistance, related to military activities.

7A Import sanctioned goods

For these Regulations, *import sanctioned goods* means charcoal.

Part 2 UN sanction enforcement laws

Division 2.1 Sanctioned supply and sanctioned services to Somalia

8 Prohibitions relating to a sanctioned supply

- (1) A person contravenes this regulation if:
 - (a) the person makes a sanctioned supply; and
 - (b) the sanctioned supply is not an authorised supply.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

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

- (3) 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.
- (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 makes a sanctioned supply; and
 - (c) the sanctioned supply is not an authorised supply.
- (5) For this regulation:

authorised supply means a sanctioned supply that is authorised by:

 - (a) a permit under regulation 9; or

Regulation 9

- (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 733, Resolution 1356, Resolution 1425 and Resolution 1744.
- (6) A defendant, to a charge under section 27 of the Act that relates to subregulation (1), (3) or (4), bears an evidential burden in relation to the matter in subparagraph (b) (i) of the definition of authorised supply in subregulation (5).
- (7) For paragraph (b) of the definition 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.

Note This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

9 Permit to make a sanctioned supply

- (1) The Minister may, on application, grant a person a permit authorising the making of a sanctioned supply.

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

- (2) The Minister may grant a permit only if the sanctioned supply:
 - (a) is solely for the support of, or use by, the mission established by the States of the African Union as authorised by paragraph 4 of Resolution 1744; or
 - (b) is solely for the purpose of helping develop security sector institutions consistent with the process set out in paragraphs 1, 2 and 3 of Resolution 1744; or
 - (c) is a supply of protective clothing that is temporarily exported to Somalia for the personal use of:
 - (i) a member of the personnel of the United Nations; or
 - (ii) a representative of the media; or

Regulation 10

- (iii) a humanitarian or development worker or an associated person; or
 - (d) is a supply of non-lethal military equipment that:
 - (i) is intended solely for humanitarian or protective use; and
 - (ii) is approved in advance by the Committee; or
 - (e) is for the sole use of Member States and regional organisations cooperating with the TFG in the fight against piracy and armed robbery at sea, in accordance with paragraph 6 of Resolution 1851.
- (3) The Minister must not grant a permit for the purposes of paragraph (2) (b) unless:
- (a) the Minister has notified the Committee in advance of the Minister's intention to grant the permit; and
 - (b) a period of 5 working days has passed since the notification and the Committee has not advised against granting the permit.
- (4) A permit is subject to any conditions specified in the permit.

10 Prohibitions relating to the provision of sanctioned services

- (1) A person contravenes this regulation if:
- (a) the person provides a sanctioned service; and
 - (b) it is not an authorised service.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).
- Note* This has the effect that the offence has extraterritorial operation.
- (3) 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.

Regulation 11

- (4) For this regulation:
authorised service means a sanctioned service that is authorised by:
- (a) a permit under regulation 11; 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 733, Resolution 1356, Resolution 1425 and Resolution 1744.
- (5) A defendant, to a charge under section 27 of the Act that relates to subregulation (1) or (3), bears an evidential burden in relation to the matter in subparagraph (b) (i) of the definition of authorised service in subregulation (4); and
- (6) For paragraph (b) of the definition of authorised service in subregulation (4), 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.

Note This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

11 Permit to provide a sanctioned service

- (1) The Minister may, on application, grant a person a permit authorising the provision of a sanctioned service.
- Note* Section 13A of the Act applies to a permit granted by the Minister under this subregulation.
- (2) The Minister may grant a permit only if the sanctioned service:
- (a) is solely for the support of, or use by, the mission established by the States of the African Union as authorised by paragraph 4 of Resolution 1744; or
 - (b) is solely for the purpose of helping develop security sector institutions consistent with the process set out in paragraphs 1, 2 and 3 of Resolution 1744; or

Regulation 12

- (c) is solely for the purpose of enhancing the capacity of Somalia and nearby coastal States to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines, as set out in paragraph 5 of Resolution 1846.
- (3) The Minister must not grant a permit for the purposes of paragraph (2) (b) or (c) unless :
 - (a) the Minister has notified the Committee in advance of the Minister's intention to grant the permit; and
 - (b) a period of 5 working days has passed since the notification and the Committee has not advised against granting the permit.
- (4) A permit is subject to any conditions specified in the permit.

Division 2.2 Sanctions relating to designated person or entity

12 Prohibition relating to prohibited supply or prohibited service to designated person or entity

- (1) A person contravenes this regulation if the person:
 - (a) makes a prohibited supply to a designated person or entity; or
 - (b) provides a prohibited service to a designated person or entity.
- (2) 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 prohibited supply to a designated person or entity.
- (3) 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

Regulation 13

(b) the other body corporate or entity provides a prohibited service to a designated person or entity.

- (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 (1), (2) or (3).

Note 1 Subregulation (4) has the effect that the offence has extraterritorial operation.

Note 2 This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

13 Prohibition relating to dealings with designated persons or entities

- (1) A person contravenes this regulation if:
- (a) the person directly or indirectly makes an asset available to, or for the benefit of, a designated person or entity; and
 - (b) the making available of the asset:
 - (i) is not authorised by a permit under regulation 15; or
 - (ii) does not occur in a circumstance to which paragraph 5 of Resolution 1916 applies.

Note Paragraph 5 of Resolution 1916 describes the circumstances as follows:

‘the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners’.

- (1A) For the purpose of determining whether paragraph 5 of Resolution 1916 applies to a circumstance, regard may be had to:
- (a) advice; or
 - (b) an opinion; or
 - (c) a recommendation;
given or made by the Committee.

Regulation 14

- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note 1 Subregulation (2) has the effect that the offence has extraterritorial operation.

Note 2 This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

14 Prohibition relating to controlled assets

- (1) 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 the asset or dealing with the asset; and
 - (c) the use or dealing:
 - (i) is not authorised by a permit under regulation 15; or
 - (ii) does not occur in a circumstance to which paragraph 5 of Resolution 1916 applies.

Note Paragraph 5 of Resolution 1916 describes the circumstances as follows:

‘the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners’.

- (1A) For the purpose of determining whether paragraph 5 of Resolution 1916 applies to a circumstance, regard may be had to:
- (a) advice; or
 - (b) an opinion; or
 - (c) a recommendation;
given or made by the Committee.

Regulation 15

- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note 1 Subregulation (2) has the effect that the offence has extraterritorial operation.

Note 2 This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

15 Permit for assets or 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 13 (1); 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) An application must be for:
- (a) a basic expense dealing; or
 - (b) a legally required dealing; or
 - (c) a contractual dealing; or
 - (d) an extraordinary expense dealing;
- mentioned in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.
- (3) An application must specify which kind of dealing mentioned in subregulation (2) the application is for.
- (4) 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:
 - (i) 3 working days have passed since the notice was given; and
 - (ii) the Committee has not advised against granting the permit to the applicant.
- (5) If the application is for a legally required dealing, the Minister must notify the Committee of the application.

Regulation 15A

- (6) If the application is for an extraordinary expense dealing, the Minister:
- (a) must notify the Committee of the application; and
 - (b) may grant the permit only with the approval of the Committee.
- (7) A permit is subject to any conditions specified in the permit.

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

Division 2.3 Sanctioned imports

15A Prohibitions relating to import sanctioned goods

- (1) A person contravenes this regulation if the person procures import sanctioned goods from Somalia or from a person or entity in Somalia.
- (2) 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 Somalia or a person or entity in Somalia.

Note This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

Regulation 16

Part 3 Miscellaneous**16 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.

Table of Instruments

Notes to the *Charter of the United Nations (Sanctions — Somalia) Regulations 2008*

Note 1

The *Charter of the United Nations (Sanctions — Somalia) Regulations 2008* (in force under the *Charter of the United Nations Act 1945*) as shown in this compilation is amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2008 No. 50	17 Apr 2008 (see F2008L01043)	18 Apr 2008	
2009 No. 88	15 May 2009 (see F2009L01810)	16 May 2009	—
2010 No. 199	12 July 2010 (see F2010L01940)	13 July 2010	—
2011 No. 65	17 May 2011 (see F2011L00788)	18 May 2011	—
2012 No. 163	17 July 2012 (see F2012L01572)	18 July 2012	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 4.....	am. 2009 No. 88; 2010 No. 199; 2012 No. 163
R. 5A.....	ad. 2009 No. 88
R. 6A.....	ad. 2009 No. 88
R. 7A.....	ad. 2012 No. 163
Part 2	
Heading to Part 2.....	rs. 2009 No. 88
Division 2.1	
Heading to Div. 2.1.....	ad. 2009 No. 88
R. 9.....	am. 2009 No. 88
R. 11.....	am. 2009 No. 88
Division 2.2	
Div. 2.2 of Part 2.....	ad. 2009 No. 88
R. 12.....	ad. 2009 No. 88
R. 13.....	ad. 2009 No. 88 am. 2010 No. 199
R. 14.....	ad. 2009 No. 88 am. 2010 No. 199
R. 15.....	ad. 2009 No. 88
Division 2.3	
Div. 2.3 of Part 2.....	ad. 2012 No. 163
R. 15A.....	ad. 2012 No. 163
Part 3	
Part 3.....	ad. 2011 No. 65
R. 16.....	ad. 2011 No. 65