



United Nations Sanctions (Eritrea) Regulations 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 26th day of April 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 2 of the United Nations Act 1946, His Excellency the Governor-General makes the following regulations—

- (a) acting on the advice and with the consent of the Executive Council; and
- (b) for the purpose of giving effect to resolution 1907 (2009) of the Security Council of the United Nations, adopted under the United Nations Charter, which calls upon the Government of New Zealand and all other member States of the United Nations to apply in respect of Eritrea the measures set out in that resolution.

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Regulations

- 1 Title**
These regulations are the United Nations Sanctions (Eritrea) Regulations 2010.

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

3 Interpretation

(1) In these regulations, unless the context requires another meaning,—

arms includes—

- (a) related materiel of all types (for example, weapons, ammunition, military vehicles and equipment, and paramilitary equipment); and
- (b) spare parts for any arms, or for any goods specified in paragraph (a)

asset means any financial asset or economic resource

Committee means the committee established under paragraph 11 of resolution 751 of the Security Council of the United Nations

Customs or the Customs and Customs officer have the same meaning as in section 2(1) of the Customs and Excise Act 1996

designated agent means a person designated as a person acting on behalf, or at the direction, of a designated person

designated person, in relation to measures set out in the resolution, and provided for in these regulations, means a person designated as a person to whom the measures apply

Minister means the Minister of Foreign Affairs

money includes—

- (a) the banknotes and other currency and money orders of New Zealand or any other country; and
- (b) promissory notes and bills of exchange; and
- (c) any credit in an account with any person

New Zealand includes Tokelau

New Zealand aircraft means an aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990

New Zealand ship means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand

resolution means resolution 1907 (2009) of the Security Council of the United Nations adopted on 23 December 2009
security—

- (a) includes a share, stock, bond, debenture, debenture stock, mortgage, lien, treasury bill, coupon or warrant representing dividends or interest, and a life or endowment insurance policy, in whatever currency the security is expressed; and
- (b) also includes any document or means by which the right to the ownership or provision of any money or security, or any interest in money or a security, may be exercised; but
- (c) does not include a promissory note or bill of exchange

specified entity means an entity owned or controlled, directly or indirectly, by a designated agent.

- (2) A reference in these regulations to the transfer of a security includes a reference to a transfer of a security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.
- (3) The Minister may publish, in any manner the Minister thinks fit (for example, by notice in the *Gazette*, or publication on the Internet, or both),—
 - (a) a list of the names of any persons designated as designated agents or designated persons; and
 - (b) a list of the names, descriptions, and other identifying details of any specified entities; and
 - (c) any additions to, or deletions from, the lists referred to in paragraphs (a) and (b).

Exportation of arms

4 Exportation of arms to Eritrea prohibited

- (1) No person may directly or indirectly export arms from New Zealand to Eritrea.
- (2) Subclause (1) does not apply to particular arms or to arms of a particular class if the Minister has consented to the exportation of those arms.

5 Customs and Excise Act 1996 to apply to prohibited exports

All provisions of the Customs and Excise Act 1996 with respect to prohibited exports (except section 209) apply with respect to arms whose exportation is prohibited by regulation 4 in all respects as if the exportation of the arms were prohibited under section 56 of that Act.

6 Detention of prohibited exports

A Customs officer may detain any arms he or she suspects on reasonable grounds to be arms whose exportation is prohibited by regulation 4.

7 Prohibited exports not to be loaded onto ships or aircraft

The master of a ship or the pilot in command of an aircraft must not permit to be laden in the ship or aircraft any arms whose exportation is prohibited by regulation 4, knowing that the arms are intended to be exported in contravention of that regulation.

8 Power to withhold clearance of ship or aircraft

The Customs may withhold the clearance of any ship or aircraft so long as there are on board the ship or aircraft any arms any Customs officer knows to be arms whose exportation is prohibited by regulation 4.

Dealings with arms

9 Transactions with persons in Eritrea in relation to arms prohibited

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may enter into, or be concerned in, any sale, transfer, carriage, or delivery of, or other dealing with, any arms, knowing that those arms are to be sold, transferred, carried, delivered, or otherwise dealt with, from Eritrea, or to the order of a person within Eritrea.
- (2) Subclause (1) does not apply to particular arms or to arms of a particular class if the Minister has consented to the sale, transfer, carriage, or delivery of, or other dealings with, those arms.

*Carriage of arms***10 Carriage of arms to Eritrea prohibited**

- (1) No ship or aircraft may be used for the carriage of any arms if the carriage is, or forms part of, the carriage of the arms from any place to Eritrea.
- (2) Subclause (1) does not apply if the Minister has consented to the carriage of the arms under regulation 4(2) or 9(2).
- (3) In subclause (1), **ship or aircraft** means—
 - (a) any New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3(1)); or
 - (b) any other ship or aircraft that is, for the time being, chartered to any New Zealand citizen, or to any body incorporated or constituted under the law of New Zealand.
- (4) Subclause (1) does not limit any of regulations 4 to 9.

11 Liability of owner, charterer, master, or pilot in command

- (1) If any ship or aircraft is used in contravention of regulation 10, each of the following persons is guilty of an offence against these regulations:
 - (a) in the case of a New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3(1)), the owner and the master of the ship or, as the case requires, the owner and the pilot in command of the aircraft;
 - (b) in the case of any other ship or aircraft, the charterer of the ship or aircraft and, if the master of the ship or pilot in command of the aircraft is a New Zealand citizen, the master or pilot in command.
- (2) However, it is a defence to any such offence if the person concerned proves that he or she did not know and had no reason to suppose—
 - (a) that the ship or aircraft was carrying arms; or
 - (b) that the carriage of arms was, or formed part of, the carriage of arms from any place to Eritrea.
- (3) In this regulation, **owner** and **charterer**, in relation to a ship, includes any person acting as the agent of the owner or, as the case requires, the agent of the charterer.

*Provision of assistance, advice, or training
relating to military activities*

**12 Provision to Eritrea of assistance, advice, or training
relating to military activities prohibited**

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may provide to, or at the request of, any person within Eritrea any assistance, advice, or training related to military activities.
- (2) The assistance, advice, or training referred to in subclause (1) includes, without limitation, any technical assistance or training relating to the provision, manufacture, maintenance, or use of arms.
- (3) Subclause (1) does not apply if the Minister has consented to the provision of the assistance, advice, or training.

Entry and transit of designated persons

**13 Designated persons to enter New Zealand only if
consistent with determinations of Security Council**

- (1) No designated person may enter New Zealand, or transit through New Zealand, if the entry or transit would be contrary to a determination of the Security Council made under Article 41 of the Charter of the United Nations.
- (2) Subclause (1) does not apply to a designated person who is a New Zealand citizen.
- (3) Subclause (1) does not apply so as to prevent a person from entering or transiting through New Zealand if—
 - (a) the Committee has determined that the travel is justified on the ground of humanitarian need, including religious obligation; or
 - (b) the Committee has concluded that the travel would otherwise further the objectives of Security Council resolutions relating to Eritrea.
- (4) A permit or visa may be granted or issued under the Immigration Act 1987, or the Immigration Act 2009, as the case requires, to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the permit or visa is consistent with subclauses (1) to (3).

- (5) This regulation operates in addition to the requirements of the Immigration Act 1987 and of any regulations made under that Act, or the Immigration Act 2009 and of any regulations made under that Act, as the case requires.

Funds, etc, of or for designated persons or specified entities

14 Prohibition on dealings in assets, money, or securities of, or derived from property of, designated persons, etc

- (1) No person may knowingly transfer, pay for, sell, assign, dispose of, or otherwise deal with any asset, money, or security—
- (a) that is—
 - (i) owned or controlled, directly or indirectly, by a designated person; or
 - (ii) held by a specified entity; or
 - (iii) derived or generated from any asset, money, or security of the kind specified in subparagraph (i) or (ii); and
 - (b) that is located in New Zealand.
- (2) Subclause (1) does not apply if the Minister has consented to the transfer, sale, assignment, or disposal of, payment for, or other dealing with, the asset, money, or security.
- (3) It is a defence to a prosecution under this regulation in respect of any asset, money, or security of the kind specified in subclause (1)(a) (a **restricted item**) if the defendant proves he or she dealt with the restricted item in good faith, at a time when he or she did not know that it was a restricted item.

15 Prohibition on sending funds to designated persons, etc

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may knowingly send, transfer, or deliver, or knowingly cause to be sent, transferred, or delivered, whether directly or indirectly, any money or security—
- (a) to a designated person or specified entity; or
 - (b) for the benefit of designated person or specified entity.
- (2) Subclause (1) does not apply if the Minister has consented to the sending, transfer, or delivery of the money or security.

16 Exceptions to regulations 14 and 15

- (1) Nothing in regulation 14 or 15 applies to any dealing authorised by a consent under subclause (2).
- (2) The Minister may consent to a dealing with any asset, money, or security if the Minister is satisfied that the dealing—
 - (a) is necessary for basic expenses within the meaning of paragraph 14(a) of the resolution and is authorised under that paragraph; or
 - (b) is necessary for extraordinary expenses and is authorised under paragraph 14(b) of the resolution; or
 - (c) is authorised under paragraph 14(c) of the resolution (which relates to assets, money, or securities subject to judicial, administrative, or arbitral liens or judgments).

*Miscellaneous provisions***17 Offences**

Every person commits an offence against these regulations, and is liable accordingly under section 3 of the United Nations Act 1946, who acts in contravention of or fails to comply in any respect with any of the provisions of these regulations.

18 Attorney-General's consent and certificate in certain cases

If an offence against these regulations is alleged to have been committed outside New Zealand, a prosecution for the offence may not be commenced without—

- (a) the Attorney-General's consent; and
- (b) the Attorney-General's certificate that it is expedient that the proceedings be commenced.

19 Customs and Excise Act 1996 not affected

These regulations do not affect the operation of the Customs and Excise Act 1996.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force 28 days after their notification in the *Gazette*, give effect to resolution 1907 (2009) of the Security Council of the United Nations adopted on 23 December 2009, which calls for the imposition of certain sanctions in respect of Eritrea.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 29 April 2010.
These regulations are administered by the Ministry of Foreign Affairs and Trade.
