Charter of the United Nations (Sanctions — Democratic People’s Republic of Korea) Amendment Regulations 2009 (No. 1)

Select Legislative Instrument 2009 No. 182

I, QUENTIN BRYCE, 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 9 July 2009

QUENTIN BRYCE
Governor-General

By Her Excellency’s Command

STEPHEN SMITH
Minister for Foreign Affairs
1 Name of Regulations
These Regulations are the Charter of the United Nations (Sanctions — Democratic People’s Republic of Korea) Amendment Regulations 2009 (No. 1).

2 Commencement
These Regulations commence on the day after they are registered.

3 Amendment of Charter of the United Nations (Sanctions — Democratic People’s Republic of Korea) Regulations 2008

Schedule 1 Amendments
(regulation 3)

[1] Regulation 4, after definition of Act
insert
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.
[2] Regulation 4, after definition of Australian ship

Insert

authorised service means a sanctioned service that is authorised by:
(a) a permit under regulation 14C; 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 1718 and Resolution 1784.

authorised supply means a sanctioned supply that is authorised by:
(a) a permit under regulation 14B; 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 1718 and Resolution 1874.

bunkering service, for a vessel, includes:
(a) the provision of fuel to the vessel; and
(b) the provision of supplies to the vessel; and
(c) other servicing of the vessel.

[3] Regulation 4, after definition of designated person or entity

Insert

DPRK means the Democratic People’s Republic of Korea.

DPRK vessel means a vessel registered in the DPRK or owned or controlled by the DPRK.
[4] Regulation 4, definition of military goods

Substitute

light weapon means a portable lethal weapon designed for use by several individuals functioning as a crew and includes:
(a) ammunition for the weapon; and
(b) components used for the manufacture of ammunition for the weapon; and
(c) spare and replacement parts for the weapon.

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).

[5] Regulation 4, after definition of Resolution 1718

Insert


[6] Regulation 4, after definition of Security Council

Insert before the note

small arm means a portable lethal weapon for use by 1 individual and includes:
(a) ammunition for the weapon; and
(b) components used for the manufacture of ammunition for the weapon; and
(c) spare and replacement parts for the weapon.

[7] **Paragraph 5 (1) (a)**

*substitute*

(a) arms or related matériel;

[8] **Paragraph 5 (1) (c)**

*substitute*

(c) goods mentioned in the following Security Council and International Atomic Energy Agency documents:

(i) S/2006/814;
(ii) S/2006/815;
(iii) S/2006/853;
(iv) INFCIRC/254/Rev.9/Part 1a;
(v) INFCIRC/254/Rev.7/Part 2a.

[9] **Paragraph 5 (1) (d)**

*omit*

subparagraph (8) (a) (ii)

*insert*

subparagraphs (8) (a) (i) and (ii)

[10] **Paragraphs 7 (a) and (b)**

*substitute*

(a) arms or related matériel;
(b) goods mentioned in the following Security Council and International Atomic Energy Agency documents:

(i) S/2006/814;
(ii) S/2006/815;
(iii) S/2006/853;
(iv) INFCIRC/254/Rev.9/Part 1a;
(v) INFCIRC/254/Rev.7/Part 2a.

[11] **Paragraph 7 (c)**

*omit*
subparagraph (8) (a) (ii)

*insert*
subparagraphs (8) (a) (i) and (ii)

[12] **Subparagraph 8 (c) (ii)**

*omit*
Democratic People’s Republic of Korea.

*insert*
Democratic People’s Republic of Korea;

[13] **After paragraph 8 (c)**

*insert*
(d) a financial transaction related to the supply, manufacture, maintenance or use of arms or related matériel (other than small arms or light weapons).

[14] **Subregulations 9 (4) and (5), except the note**

*substitute*

(4) A person, whether or not in Australia, and whether or not an Australian citizen, contravenes this regulation if:
(a) the person uses the services of an Australian ship or an Australian aircraft to transport or export sanctioned goods in the course of, or for the purpose of, making a sanctioned supply; and
(b) the sanctioned supply 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.

[15] **Subregulation 11 (2)**

substitute

(2) A person contravenes this regulation if:
   (a) the person provides a sanctioned service; and
   (b) the sanctioned service is not an authorised service; and
   (c) the sanctioned service is not provided in relation to an
       authorised supply.

[16] **Paragraph 11 (5) (b), except the note**

substitute

(b) the other body corporate or entity provides a sanctioned
    service or procures a sanctioned service from:
    (i) the Democratic People’s Republic of Korea; or
    (ii) a person in the Democratic People’s Republic of
         Korea; or
    (iii) a national of the Democratic People’s Republic of
          Korea; and
   (c) the sanctioned service is not an authorised service; and
   (d) the sanctioned service is not provided in relation to an
       authorised supply.
[17] After regulation 11

insert

11A Prohibition relating to bunkering service

(1) A person contravenes this regulation if the person provides a bunkering service to a DPRK vessel and the provision of the bunkering service is not authorised in accordance with subregulation (3).

(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 provides a bunkering service to a DPRK vessel and the provision of the bunkering service is not authorised in accordance with subregulation (3).

(3) The provision of a bunkering service to a DPRK vessel is authorised:
   (a) by a permit under regulation 14A; or
   (b) if the bunkering service is provided in a foreign country — by 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 1718 and Resolution 1874.
[18] After regulation 14
insert in Part 2

14A Permit to provide a bunkering service

(1) The Minister may, on application, grant a person a permit authorising the provision of a bunkering service to a DPRK vessel.

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

(2) The Minister must not grant the permit if the Minister has reasonable grounds for believing that the vessel is carrying export sanctioned goods unless:
(a) the supply of the service is for humanitarian purposes; or
(b) the export sanctioned goods have been inspected, seized and disposed of in accordance with paragraph 17 of Resolution 1874.

(3) A permit is subject to any conditions specified in the permit.

14B 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 is a supply, sale or transfer of small arms or light weapons.

(3) The Minister must not grant a permit for the purposes of subregulation (2) unless:
(a) the Minister has notified the Committee of the application; and
(b) 5 working days have passed since the notification was given and the Committee has not advised against granting the permit to the applicant.

(4) A permit is subject to any conditions specified in the permit.
14C 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 the service is in relation to a sanctioned supply of small arms or light weapons.

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

(2) The Minister must not grant the permit unless the sanctioned supply to which the sanctioned service relates is an authorised supply.

(3) A permit is subject to any conditions specified in the permit.

Note