



Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Amendment Regulations 2011 (No. 2)¹

Select Legislative Instrument 2011 No. 248

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 7 December 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

KEVIN RUDD
Minister for Foreign Affairs

1 Name of Regulations

These Regulations are the *Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Amendment Regulations 2011 (No. 2)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Regulations 2011*

Schedule 1 amends the *Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Regulations 2011*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 3, definition of *designated person or entity*, paragraph (c)

substitute

(c) a person or entity designated by the Committee or Security Council for paragraph 17 of Resolution 1970, other than a person or entity specified in paragraph 14 of Resolution 2009.

[2] Regulation 3, after definition of *Resolution 1973*

insert

Resolution 2009 means Resolution 2009 (2011) of the Security Council of the United Nations, adopted on 16 September 2011.

[3] After subregulation 6 (4)*insert*

- (5) For this regulation:

authorised supply means a sanctioned supply that is authorised by:

- (a) a permit under regulation 7; or
 - (b) if the supply, sale or transfer takes place in, or is 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 1970 or any other relevant resolution of the Security Council.
- (6) A defendant, to a charge under section 27 of the Act that relates to subregulation (1), (2) or (3), 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.

[4] Paragraphs 7 (2) (c) and (d)*substitute*

- (c) is a supply of arms or related matériel that is:
- (i) not a supply of arms and related matériel mentioned in paragraph (a) or (b); and
 - (ii) approved in advance by the Committee; or
- (d) is a supply of arms or related matériel to which the following apply:
- (i) the arms or related matériel are intended solely for security or disarmament assistance to the Libyan authorities;
 - (ii) the supply is notified in advance to the Committee;

- (iii) 5 working days have passed since the notification was given;
- (iv) the Committee has not advised against granting a permit to the applicant; or
- (e) is a supply of small arms, light weapons or related matériel to which the following apply:
 - (i) the small arms, light weapons or related matériel are to be temporarily exported to the Libyan Arab Jamahiriya for the sole use of United Nations personnel, representatives of the media, humanitarian and development workers, or associated personnel; and
 - (ii) the supply is notified in advance to the Committee;
 - (iii) 5 working days have passed since the notification was given;
 - (iv) the Committee has not advised against granting a permit to the applicant.

[5] After subregulation 9 (4)

insert

- (5) For this regulation:
 - authorised service*** means a sanctioned service that is authorised by:
 - (a) a permit under regulation 10; 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 1970 or any other relevant resolution of the Security Council.
- (6) A defendant, to a charge under section 27 of the Act that relates to subregulation (1), (2) or (3), bears an evidential burden in relation to the matter in subparagraph (b) (i) of the definition of ***authorised service*** in subregulation (5).

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- (7) For paragraph (b) of the definition of *authorised service* 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.

[6] Paragraphs 10 (2) (b) and (c)

substitute

- (b) consists of assistance and personnel that is:
- (i) related to the supply of arms and related matériel that are not arms or related matériel mentioned in subparagraph (a) (i); and
 - (ii) approved in advance by the Committee; or
- (c) consists of technical assistance or training, or financial or other assistance to which the following apply:
- (i) the technical assistance or training, or financial or other assistance, is intended solely for security or disarmament assistance to the Libyan authorities;
 - (ii) the provision of the technical assistance or training, or financial or other assistance, is notified in advance to the Committee;
 - (iii) 5 working days have passed since the notification was given;
 - (iv) the Committee has not advised against granting a permit to the applicant.

[7] Subregulation 11 (2)

substitute

- (2) However, a person does not contravene this regulation if the asset is made available to, or for the benefit of:
- (a) the following designated entities:
- (i) Central Bank of Libya;
 - (ii) Libyan Arab Foreign Bank;
 - (iii) Libyan Investment Authority;
 - (iv) Libyan Africa Investment Portfolio; or

- (b) a person or entity that:
 - (i) is acting on behalf of or at the direction of an entity in subparagraph (a) (i), (ii), (iii) or (iv); and
 - (ii) is not otherwise a designated person or entity; or
- (c) an entity that:
 - (i) is owned or controlled by an entity in subparagraph (a) (i), (ii), (iii) or (iv); and
 - (ii) is not otherwise a designated person or entity.
- (3) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of this regulation.

Note 1 Subregulation (3) 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*.

[8] Subregulation 12 (2)

substitute

- (2) However, a person does not contravene this regulation if the controlled asset:
 - (a) is owned or controlled by:
 - (i) Central Bank of Libya; or
 - (ii) Libyan Arab Foreign Bank; or
 - (iii) Libyan Investment Authority; or
 - (iv) Libyan Africa Investment Portfolio; and
 - (b) is not an asset that:
 - (i) was outside the Libyan Arab Jamahiriya on 16 September 2011; and
 - (ii) was frozen on 16 September 2011.
- (3) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of this regulation.

Note 1 Subregulation (3) 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*.

[9] Regulation 13

substitute

13 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 11 (1); or
 - (b) a use of, or dealing with, a controlled asset that would otherwise contravene regulation 12.

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

- (2) The application must be for either:
- (a) a dealing with an asset described in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*, in the circumstances mentioned in the corresponding item of the table in subregulation (3); or
 - (b) a use of, or a dealing with, an asset for an authorised purpose mentioned in subregulation (4) if:
 - (i) the application relates to an asset that is owned or controlled by the Central Bank of Libya, Libyan Arab Foreign Bank, Libyan Investment Authority or Libyan Africa Investment Portfolio; and
 - (ii) was outside the Libyan Arab Jamahiriya and frozen on 16 September 2011.
- (3) For paragraph (2) (a), the application must be for a dealing mentioned in an item of the table and in the circumstances for the item.

Item	Dealing	Circumstances
1	Basic expense dealing	The Minister has notified the Committee that the Minister proposes to authorise the dealing as a basic expense dealing

Item	Dealing	Circumstances
		The Committee has not advised the Minister of its opposition to the proposal within 5 working days after the Minister notified the Committee
2	Legally required dealing	<p>The Minister has notified the Committee that the Minister proposes to authorise the dealing as a legally required dealing</p> <p>The judicial, administrative or arbitral lien or judgement to which the dealing relates:</p> <p>(a) was made on or before 26 February 2011; and</p> <p>(b) was not made for the benefit of a designated person or entity</p>
3	Contractual dealing	<p>If the dealing is the application of interest or other earnings due on an account holding a controlled asset, the interest or other earnings is to be treated as part of the controlled asset</p> <p>If the dealing is required under a contract, agreement or obligation made before the date on which an account became an account holding a controlled asset, the account is to be treated as continuing to hold a controlled asset</p>
4	Required payment dealing	<p>The Minister has notified the Committee that the Minister proposes to authorise the dealing as a required payment dealing</p> <p>The Minister notified the Committee at least 10 working days before the proposed date of the authorisation</p>
5	Extraordinary expense dealing	<p>The Minister has notified the Committee that the Minister proposes to authorise the dealing as an extraordinary expense dealing</p> <p>The Committee has advised the Minister that it has approved the proposal</p>
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<p>(4) For paragraph (2) (b), an authorised purpose for a use or dealing with the asset includes any of the following purposes:</p> <p>(a) addressing humanitarian needs;</p> <p>(b) providing water or energy for civilian use;</p> <p>(c) resuming the production and sale of hydrocarbons in Libyan Arab Jamahiriya;</p> <p>(d) establishing, operating or strengthening civilian government institutions and civilian public infrastructure;</p>		
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8	Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Amendment Regulations 2011 (No. 2)	
		2011, 248

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- (e) facilitating the resumption of banking sector operations and supporting international trade with Libyan Arab Jamahiriya.
- (5) The Minister may grant a permit only if:
- (a) the Minister is satisfied that the application is for a dealing, in the circumstances for the item mentioned in subregulation (3), and the circumstances for the dealing have been completed; or
 - (b) the Minister:
 - (i) is satisfied that the application is for a use of or dealing with the asset for an authorised purpose mentioned in paragraph (4) (a), (b), (c), (d) or (e); and
 - (ii) has notified the Committee that the Minister has consulted with the Libyan authorities about the use of the controlled asset and the Minister proposes to authorise the use or dealing for an authorised purpose; and
 - (iii) has provided the notification to the Libyan authorities and has not been advised against granting a permit to the applicant by the authorities, within 5 working days after the Minister notified the authorities; and
 - (iv) has not been advised against granting a permit to the applicant by the Committee, within 5 working days after the Minister notified the Committee.
- (6) A permit is subject to any conditions specified in it.

[10] Regulation 13A

omit

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>.