



## DEMOCRATIC REPUBLIC OF THE CONGO (SANCTIONS) REGULATIONS 2018

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Statutory Document No. 2018/0138

*European Communities (Isle of Man) Act 1973*

## DEMOCRATIC REPUBLIC OF THE CONGO (SANCTIONS) REGULATIONS 2018<sup>1</sup>

*Laid before Tynwald: 15 May 2018*  
*Coming into operation in accordance with regulation 2*

The Council of Ministers makes the following Regulations under section 2B of the European Communities (Isle of Man) Act 1973.

### 1 Title

These Regulations are the Democratic Republic of the Congo (Sanctions) Regulations 2018.

### 2 Commencement

These Regulations come into operation immediately after they are made<sup>1</sup>.

### 3 Interpretation

(1) In these Regulations —

“**designated person**” means a person, entity or body listed in Annex I or Ia to the EC Regulation;

“**the EC Regulation**” means Council Regulation (EC) No 1183/2005<sup>2</sup> of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, as modified by the following —

(a) Commission Regulation (EC) No 1824/2005<sup>3</sup> of 9 November 2005;

<sup>1</sup> Regulations made under section 2B(1) of the European Communities (Isle of Man) Act 1973 must be laid before Tynwald as soon as possible after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that the regulations shall be annulled, the regulations shall upon such resolution cease to have effect.

<sup>2</sup> OJ L193, 23.7.2005, p.1.

<sup>3</sup> OJ L294, 10.11.2005, p.3.



- (b) Commission Regulation (EC) No 84/2006<sup>4</sup> of 18 January 2006;
- (c) Council Regulation (EC) No 1791/2006<sup>5</sup> of 20 November 2006;
- (d) Commission Regulation (EC) No 201/2007<sup>6</sup> of 23 February 2007;
- (e) Commission Regulation (EC) No 400/2007<sup>7</sup> of 12 April 2007;
- (f) Commission Regulation (EC) No 933/2007<sup>8</sup> of 3 August 2007;
- (g) Commission Regulation (EC) No 1096/2007<sup>9</sup> of 20 September 2007;
- (h) Commission Regulation (EC) No 242/2009<sup>10</sup> of 20 March 2009;
- (i) Commission Regulation (EU) No 1250/2010<sup>11</sup> of 22 December 2010;
- (j) Commission Implementing Regulation (EU) No 1097/2011<sup>12</sup> of 25 October 2011;
- (k) Commission Implementing Regulation (EU) No 7/2012<sup>13</sup> of 5 January 2012;
- (l) Commission Implementing Regulation (EU) No 1251/2012<sup>14</sup> of 20 December 2012;
- (m) Commission Implementing Regulation (EU) No 53/2013<sup>15</sup> of 22 January 2013;
- (n) Council Regulation (EU) No 521/2013<sup>16</sup> of 6 June 2013;
- (o) Council Regulation (EU) No 517/2013<sup>17</sup> of 13 May 2013;
- (p) Council Regulation (EU) No 271/2014<sup>18</sup> of 17 March 2014;

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<sup>4</sup> OJ L14, 19.1.2006, p.14.

<sup>5</sup> OJ L363, 20.12.2006, p.1.

<sup>6</sup> OJ L59, 27.2.2007, p.73.

<sup>7</sup> OJ L98, 13.4.2007, p.20.

<sup>8</sup> OJ L204, 4.8.2007, p.5.

<sup>9</sup> OJ L246, 21.9.2007, p.29.

<sup>10</sup> OJ L75, 21.3.2009, p.8.

<sup>11</sup> OJ L341, 23.12.2010, p.11.

<sup>12</sup> OJ L285, 1.11.2011, p.2.

<sup>13</sup> OJ L4, 7.1.2012, p.1.

<sup>14</sup> OJ L352, 21.12.2012, p.42.

<sup>15</sup> OJ L20, 23.1.2013, p.46.

<sup>16</sup> OJ L156, 8.6.2013, p.1.

<sup>17</sup> OJ L158, 10.6.2013, p.1.

<sup>18</sup> OJ L79, 18.3.2014, p.35.

- (q) Council Implementing Regulation (EU) No 1275/2014<sup>19</sup> of 1 December 2014;
- (r) Council Regulation (EU) 2015/613<sup>20</sup> of 20 April 2015;
- (s) Council Implementing Regulation (EU) 2015/614<sup>21</sup> of 20 April 2015;
- (t) Council Regulation (EU) 2016/1165<sup>22</sup> of 18 July 2016;
- (u) Council Regulation (EU) 2016/2230<sup>23</sup> of 12 December 2016;
- (v) Council Implementing Regulation (EU) 2017/199<sup>24</sup> of 6 February 2017;
- (w) Council Implementing Regulation (EU) 2017/396<sup>25</sup> of 7 March 2017;
- (x) Council Implementing Regulation (EU) 2017/904<sup>26</sup> of 29 May 2017;
- (y) Council Regulation (EU) 2017/1326<sup>27</sup> of 17 July 2017;
- (z) Council Implementing Regulation (EU) 2018/197<sup>28</sup> of 9 February 2018; and
- (aa) Council Implementing Regulation (EU) 2018/566<sup>29</sup> of 12 April 2018,

as these instruments have effect in the Island<sup>30</sup>, and a reference to a numbered Article or Annex (without more) is a reference to the Article of, or Annex to, the EC or EU Regulation so numbered;

“**financial benefit**” includes the discharge, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible; and

“**relevant institution**” means a person licensed under the Financial Services Act 2008 to undertake, by way of business, a regulated activity.

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<sup>19</sup> OJ L346, 2.12.2014, p.3.

<sup>20</sup> OJ L102, 21.4.2015, p.3.

<sup>21</sup> OJ L102, 21.4.2015, p.10.

<sup>22</sup> OJ L193, 19.7.2016, p.15.

<sup>23</sup> OJ L1336, 12.12.2016, p.1.

<sup>24</sup> OJ L32, 7.2.2017, p.1.

<sup>25</sup> OJ L60, 8.3.2017, p.9.

<sup>26</sup> OJ L138, 29.5.2017, p.1.

<sup>27</sup> OJ L185, 18.7.2017, p.19.

<sup>28</sup> OJ L38, 10.2.2018, p.2.

<sup>29</sup> OJ L95, 13.4.2018, p.9.

<sup>30</sup> The Council Regulation (EC) No 1183/2005 as amended by (a) to (aa) was applied to the Island with certain modifications by SD 2018/xxxx. As the EC Regulation applies to the Island, any reference to an Annex to the EC Regulation is construed to be a reference to the Annex as amended from time to time.

- (2) Any expression used both in these Regulations and in the EC Regulation has the meaning that it bears in the EC Regulation.

#### 4 Application

- (1) An offence under these Regulations may be committed by conduct wholly or partly outside the Island by an Island person.
- (2) In paragraph (1) –
- “**conduct**” includes acts and omissions;
- “**Island person**” means –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen who is resident in the Island;
  - (b) a person who under the British Nationality Act 1981 (c.61 of Parliament) is a British subject who is resident in the Island;
  - (c) a British protected person within the meaning of that Act who is resident in the Island;
  - (d) a body incorporated under the law of the Island; or
  - (e) a limited liability company registered in the Island.

#### 5 Freezing of funds and economic resources

- (1) A person (“**P**”) must not deal with funds or economic resources belonging to, or owned, held or controlled, directly or indirectly, by a designated person, including funds or economic resources owned, held or controlled by a third party acting on the designated person’s behalf or at the designated person’s direction, if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.
- (2) In paragraph (1) “**deal with**” means –
- (a) in relation to funds –
    - (i) use, alter, move, allow access to or transfer;
    - (ii) deal with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
    - (iii) make any other change that would enable use, including portfolio management; and
  - (b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.
- (3) Paragraph (1) is subject to regulation 11 (licences).

**6 Making funds available to designated person**

- (1) A person (“P”) must not make funds available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.
- (2) Paragraph (1) is subject to regulations 10 (credits to a frozen account) and 11.

**7 Making funds available for the benefit of a designated person**

- (1) A person (“P”) must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.
- (2) For the purposes of this regulation funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit.
- (3) Paragraph (1) is subject to regulations 10 and 11.

**8 Making economic resources available to a designated person**

- (1) A person (“P”) must not make economic resources available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect –
  - (a) that P is making the economic resources so available; and
  - (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.
- (2) Paragraph (1) is subject to regulation 11.

**9 Making economic resources available for the benefit of a designated person**

- (1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.
- (2) For the purposes of this regulation economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit.
- (3) Paragraph (1) is subject to regulation 11.

**10 Credits to a frozen account**

- (1) The prohibitions in regulations 6 and 7 are not contravened by a person who credits a frozen account with –
  - (a) interest or other earnings due on the account;

- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account; or
  - (c) payments due to a person listed in Annex Ia to the EC Regulation under a judicial, administrative or arbitral decision which —
    - (i) was made in the European Union; or
    - (ii) is enforceable in the Island.
- (2) The prohibitions in regulations 6 and 7 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.
- (3) A relevant institution must inform the Treasury without delay if it credits a frozen account in accordance with paragraph (1)(b) or (2).
- (4) In this regulation “**frozen account**” means an account with a relevant institution which is owned, held or controlled, directly or indirectly, by a designated person or by a third party acting on the designated person’s behalf or at the designated person’s direction.

## 11 Licences

- (1) The prohibitions and requirements in regulations 5 to 9 do not apply to anything done under the authority of a licence granted by the Treasury.
- (2) A licence must specify the acts authorised by it and may be —
- (a) general or granted to a category of persons or to a particular person;
  - (b) subject to conditions;
  - (c) of indefinite duration or subject to an expiry date.
- (3) The Treasury may vary or revoke a licence at any time.
- (4) On the grant, variation or revocation of a licence, the Treasury must —
- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person;
  - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury considers appropriate to publicise the grant, variation or revocation of the licence.
- (5) A person commits an offence who, for the purpose of obtaining a licence, knowingly or recklessly —
- (a) provides information that is false in a material respect; or
  - (b) provides or produces a document that is not what it purports to be.
- (6) A person who purports to act under the authority of a licence granted by the Treasury but who fails to comply with any conditions included in the licence commits an offence.

## 12 Contravention and circumvention of prohibitions

- (1) Subject to regulations 10(1), 10(2) and 11(1), a person who contravenes any of the prohibitions or requirements in regulations 5 to 9 commits an offence.
- (2) A person commits an offence who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly) —
  - (a) to circumvent any of the prohibitions in regulations 5 to 9; or
  - (b) to enable or facilitate the contravention of any such prohibition or requirement.

## 13 Liability of officers of body corporate etc.

- (1) If an offence under these Regulations committed by a body corporate is shown —
  - (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
  - (b) to be attributable to any neglect on the part of any such officer, the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.
- (2) If an offence under these Regulations committed by a partnership is shown —
  - (a) to have been committed with the consent or the connivance of a partner; or
  - (b) to be attributable to any neglect on the part of a partner, the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.
- (3) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown —
  - (a) to have been committed with the consent or the connivance of an officer of the association; or
  - (b) to be attributable to any neglect on the part of any such officer, the officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.
- (4) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.
- (5) In this regulation —  
“**officer**” includes —



- (a) in relation to a body corporate, a director, manager, secretary, chief executive, member of the committee of management and its registered agent;
- (b) in relation to an unincorporated association, any officer of the association and any member of its governing body; and
- (c) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, the company's manager, the registered agent and its members, and any person purporting to act in such a capacity;

“**partner**” includes a person holding himself or herself out to be a partner (within the meaning of section 16(1) of the Partnership Act 1909).

## 14 Penalties and proceedings

- (1) Any person guilty of an offence under regulations 11 or 12 is liable –
  - (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or both; or
  - (b) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale, or both.
- (2) A person guilty of an offence under paragraph 1(5), 4(1) or 5(6) of the Schedule, is liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale, or both.
- (3) No proceedings for an offence under these Regulations, other than a summary offence, shall be instituted except by or with the consent of the Treasury or the Attorney General.
- (4) Paragraph (3) does not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

## 15 Information

The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Treasury, of information for the purpose of ensuring compliance with the EC Regulation.

MADE 08:15 24 APRIL 2018



**SCHEDULE**

[Regulation 15]

**INFORMATION****1 Reporting obligations of relevant institution**

- (1) A relevant institution must inform the Treasury (or any other person authorised by the Treasury for that purpose, either generally or in a particular case) as soon as practical if –
  - (a) it knows, or has reasonable cause to suspect, that a person –
    - (i) is a designated person; or
    - (ii) has committed an offence under regulation 11 or 12; and
  - (b) the information or other matter on which the knowledge or suspicion is based came to it in the course of carrying on its business.
- (2) Where a relevant institution informs the Treasury under sub-paragraph (1), it must state –
  - (a) the information or other matter on which the knowledge or suspicion is based; and
  - (b) any information it holds about the person by which the person can be identified.
- (3) Sub-paragraph (4) applies if –
  - (a) a relevant institution informs the Treasury under sub-paragraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated person; and
  - (b) that person is a customer of the institution.
- (4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer.
- (5) A relevant institution that fails to comply with any requirement of sub-paragraphs (1), (2) or (4) commits an offence.

**2 Powers to request information**

- (1) The Treasury (or any person authorised by the Treasury for that purpose, either generally or in a particular case) may request a designated person to provide information concerning –
  - (a) funds or economic resources belonging to, owned, held or controlled by or on behalf of the designated person; or
  - (b) any disposal of such funds or economic resources.

- (2) The Treasury may request a designated person to provide such information as the Treasury may reasonably require about expenditure —
  - (a) by or on behalf of the designated person; or
  - (b) for the benefit of the designated person.
- (3) The power in sub-paragraph (1) or (2) is exercisable only where the Treasury believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of these Regulations.
- (4) The Treasury may request a person acting under a licence granted under regulation 11 to provide information concerning —
  - (a) funds or economic resources dealt with under the licence; or
  - (b) funds or economic resources made available under the licence.
- (5) The Treasury may request any person in or resident in the Island to provide such information as the Treasury may reasonably require for the purpose of —
  - (a) establishing for the purposes of these Regulations —
    - (i) the nature and amount or quantity of any funds or economic resources belonging to, owned, held or controlled by or on behalf of a designated person;
    - (ii) the nature and amount or quantity of any funds or economic resources made available directly or indirectly to, or for the benefit of, a designated person; or
    - (iii) the nature of any financial transactions entered into by a designated person;
  - (b) monitoring compliance with or detecting evasion of these Regulations; or
  - (c) obtaining evidence of the commission of an offence under these Regulations.
- (6) The Treasury may specify the manner in which, and the period within which, information is to be provided.
- (7) If no such period is specified, the information which has been requested must be provided within a reasonable time.
- (8) A request may include a continuing obligation to keep the Treasury informed as circumstances change, or on such regular basis as the Treasury may specify.
- (9) Information requested under this paragraph may relate to any period of time during which a person is, or was, a designated person.
- (10) Information requested under sub-paragraph (1)(b), (2) or (5)(a)(iii) may relate to any period of time before a person became a designated person (as well as, or instead of, any subsequent period of time).

### 3 Production of documents

- (1) A request under paragraph 2 may include a request to produce specified documents or documents of a specified description.
- (2) Where the Treasury requests that documents be produced, it may —
  - (a) take copies or extracts from any document so produced;
  - (b) request any person producing a document to give an explanation of it; and
  - (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is —
    - (i) in the case of a partnership, a present or past partner or employee of the partnership;
    - (ii) in any other case, a present or past officer or employee of the body concerned;to give such an explanation.
- (3) Where the Treasury requests a designated person or a person acting under a licence granted under regulation 11 to produce documents, that person must —
  - (a) take reasonable steps to obtain the documents (if not already in the person's possession or control);
  - (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Treasury or as the Treasury may otherwise permit).

### 4 Failure to comply with request for information

- (1) A person commits an offence who —
  - (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule;
  - (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
  - (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, conceals or removes any document; or
  - (d) otherwise intentionally obstructs the Treasury in the exercise of its powers under this Schedule.
- (2) Where a person is convicted of an offence under this paragraph, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

## 5 General power to disclose information

- (1) The Treasury (or any person authorised by the Treasury as a “requesting authority” under paragraph 2) may disclose any information obtained by it pursuant to these Regulations to any person for the purpose of facilitating or ensuring compliance with the EC Regulation.
- (2) The power in sub-paragraph (1) includes but is not limited to disclosing information to the following persons —
  - (a) a police officer;
  - (b) any person holding or acting in any office under, or in the service of —
    - (i) the Government of the Island;
    - (ii) the Crown in right of the Government of the United Kingdom;
    - (iii) the Crown in right of the Scottish Administration, the Northern Ireland Executive or the Welsh Government;
    - (iv) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark; or
    - (v) the Government of any British overseas territory;
  - (c) any law officer of the Crown in any of the British Islands;
  - (d) the Legal Aid Agency in England and Wales, the Scottish Legal Aid Board or the Legal Services Agency Northern Ireland;
  - (e) the Isle of Man Financial Services Authority and any body of any other part of the British Islands exercising an equivalent function;
  - (f) any organ of the United Nations;
  - (g) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;
  - (h) any of the competent authorities specified in, and for the purpose of ensuring compliance with, the EC Regulation; or
  - (i) with the consent of a person who, in the person’s own right, is entitled to information or to possession of the document, copy or extract, to any third party.
- (3) In sub-paragraph (2)(i), “in the person’s own right” means not merely in the capacity as a servant or agent of another person.
- (4) The purpose of facilitating or ensuring compliance with the EC Regulation includes but is not limited to the following —
  - (a) monitoring compliance with, or detecting evasion of, these Regulations or the EC Regulation;
  - (b) giving assistance or co-operation, pursuant to the EC Regulation; or

- (c) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings –
  - (i) in the Island for an offence under these Regulations; or
  - (ii) in any other part of the British Islands or any British overseas territory, for an offence under a similar provision in any such jurisdiction.
- (5) A disclosure under sub-paragraph (1) does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure; or
  - (b) any other restriction on the disclosure of information (however imposed).
- (6) A person commits an offence if the person, without reasonable excuse, discloses information otherwise than in accordance with sub-paragraph (1).

## 6 Application of provisions

- (1) Nothing done under this Schedule is to be treated as a breach of any regulation imposed by statute or otherwise.
- (2) But nothing in this Schedule authorises a disclosure –
  - (a) that contravenes the Data Protection Act 2002; or
  - (b) of intercepted material that is not otherwise permitted under the safeguards arrangements relating to a warrant issued under the Interception of Communications Act 1988.
- (3) Nothing in this Schedule is to be read as requiring a person who has acted as an advocate or other legal adviser to any person to disclose any privileged information in their possession in that capacity.
- (4) This Schedule does not limit the circumstances in which information may be disclosed apart from this Schedule.
- (5) This Schedule does not limit the powers of the Treasury to impose conditions in connection with the discharge of its functions under regulation 11.
- (6) In this paragraph “**privileged information**” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.