

UNITED NATIONS ACT 1946

COUNCIL REGULATION (EC) NO 1184/2005

SUDAN

This Notice draws attention in convenient form to both the Order in Council, made under the United Nations Act 1946 and Council Regulation (EC) No 1184/2005, which place financial sanctions on Sudan. This Notice provides guidance on certain aspects only of the Order in Council and the Council Regulation and should be read alongside the Order in Council and Council Regulation.

HM Treasury has appointed the Bank of England to act as its agent for the purposes of administering the financial sanctions against Sudan. Accordingly, certain powers have been delegated by HM Treasury to the Bank of England.

INTRODUCTION

1. On 29 March 2005 the United Nations Security Council adopted Resolution 1591 (2005) which, inter alia, required member states to freeze the funds and economic resources of persons designated by the Committee established by paragraph 3(a) of Resolution 1591 (2005) (the “UN Committee”) as person impeding the peace process, constituting a threat to stability and breaking international law in the Darfur region of Sudan.
2. The Sudan (United Nations Measures) Order 2005, (S.I. 2005/1259), (the “Order”), came into force on 12 May 2005. The Order gives effect in the UK to United Nations Security Council Resolution 1591 (2005).

European Community Regulations

3. On 18 July 2005 the Council of the European Union adopted Council Regulation (EC) No 1184/2005 which implements Resolution 1591 (2005) at Community level. Council Regulation (EC) No 1184/2005 is directly applicable in the UK.
4. A copy of Council Regulation (EC) No 1184/2005 can be found on the Bank of England’s website:
<http://www.bankofengland.co.uk/publications/financialsanctions/index.htm>.
5. Council Regulation (EC) No 1184/2005 applies within the territory of the Community including its airspace, on board any aircraft or any vessel under the jurisdiction of a Member State, to any natural person inside or outside the territory of the Community who is a national of a Member State, to any legal person, entity or body which is incorporated or constituted under the law of a Member State, and to any legal person, entity or body in respect of any business done in whole or in part within the Community.
6. Article 2 of Council Regulation (EC) No 1184/2005 provides that:
 - a) all funds and economic resources belonging to, owned or controlled, directly or indirectly, by persons listed in Annex I to the Regulation must be frozen; and
 - b) no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of persons listed in Annex I to the Regulation;
 - c) the participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in (a) and (b) above shall be prohibited.
7. On 25 April 2006 the United Nations Security Council adopted Resolution 1672 (2006) which required member states to freeze the funds and economic resources of four persons in accordance with the terms of Resolution 1591 (2005).

8. On 18 May 2006 the Commission of the European Communities adopted Commission Regulation (EC) No 760/2006 which amended Annex I to Council Regulation (EC) No 1184/2005 to include the four persons designated in Resolution 1672 (2006).
9. For ease of reference the names of those subject to financial sanctions (“listed persons”) by Council Regulation (EC) No 1184/2005 as amended are listed in the Annex to this Notice.

Definition of funds

10. For the purposes of Council Regulation (EC) No 1184/2005 “funds” means financial assets and benefits of every kind, including (but not limited to):
 - (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (iii) securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivative contracts);
 - (iv) interest, dividends or other income on or value accruing from or generated by assets;
 - (v) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
 - (vi) letters of credit, bills of lading, bills of sale;
 - (vii) documents evidencing an interest in funds or financial resources;
 - (viii) any other instrument of export financing.

“Economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

The EC Regulations and payments to and from frozen accounts

11. All funds and economic resources that are owned or controlled by listed persons held by banks, building societies, stockbrokers, solicitors, accountants, etc must be frozen. No funds or economic resources may be made available directly or indirectly to or for the benefit of the listed persons. The only exceptions are those permitted under Council Regulation (EC) No 1184/2005.
12. In this context, “freezing of funds” means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

13. In this context, "freezing of economic resources" means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.
14. No payment or transfer may be made from a frozen account, including to another frozen account, without prior authorisation. This includes (a) the deduction of fees or service charges for routine holding or maintenance of frozen accounts or (b) loans and other forms of credit which should not be made available to listed persons.

Interest and other payments

15. Under Council Regulation (EC) No 1184/2005, interest or other earnings on frozen accounts or payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which financial sanctions were imposed may be added to frozen accounts provided that any such interest, other earnings or payments continue to be frozen.
16. The prohibition against making funds or economic resources available does not prevent the crediting of frozen accounts by financial or credit institutions that receive funds transferred by third parties to the frozen account of the listed person provided that any additions to such accounts are also frozen. Financial institutions are required to inform the Bank of England of any such transactions without delay.

Exemptions

17. Subject to approval by the UN Committee, HM Treasury are able to authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, if it has determined that the funds or economic resources concerned are:
 - (a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
 - (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
 - (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;
 - (d) necessary for extraordinary expenses.
18. HM Treasury are also able to authorise the release of certain frozen funds or economic resources, if the following conditions are met:
 - (a) the funds or economic resources are subject of a judicial, administrative or arbitral lien established prior to 29 March 2005 or of a judicial, administrative or arbitral judgment rendered prior to that date;

- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the lien or judgment is not for the benefit of a listed person;
- (d) the lien or judgement is not contrary to public policy.

Provision of information

19. All financial institutions and other bodies and persons in the UK are required to inform the Bank of England of all funds or economic resources that they have frozen in accordance with the Order and Council Regulation (EC) No 1184/2005. They must also provide the Bank of England with all relevant information necessary for ensuring compliance with the Order and Council Regulation (EC) No 1184/2005.

Enquiries

20. Enquiries concerning this Notice should be addressed to the Bank of England, Threadneedle Street, London, EC2R 8AH and marked for the attention of the Financial Sanctions Unit. Enquiries may also be made by facsimile transmission (020 7601 4309), by telephone (020 7601 4768/5811/4783/4328) or by email (sanctions.unit@bankofengland.co.uk).

BANK OF ENGLAND
26 May 2006

26 May 2006

ANNEX

SUDAN

COUNCIL REGULATION (EC) No 1184/2005 AS AMENDED

Individuals

1. BADRI, Gabril, Abdul, Kareem

Position: Field Commander of the National Movement for Reform and Development

2. ELHASSAN, Gaffar, Mohamed

Title: Major General

Position: Commander of the Western Military Region for the Sudanese Air Force

3. HILAL, Musa

Title: Sheikh

Position: Paramount Chief of the Jalul Tribe in North Darfur

4. SHANT, Adam, Yacub

Position: Sudanese Liberation Army Commander

BANK OF ENGLAND

26 May 2006