

# **United Nations Sanctions (Kimberley Process) Regulations 2004**

(SR 2004/463)

Pursuant to section 2 of the United Nations Act 1946, Her Excellency the Governor-General, acting—

- (a) on the advice and with the consent of the Executive Council; and
  - (b) for the purpose of enabling conflict diamonds trade-ban measures to be effectively applied,—
- makes the following regulations.

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**Note**

**These regulations are administered in the Ministry of Foreign Affairs and Trade.**

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**Schedule**  
**Minimum requirements for certificates**

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**1 Title**

These regulations are the United Nations Sanctions (Kimberley Process) Regulations 2004.

**2 Commencement**

These regulations come into force on 14 January 2005.

**Interpretation****3 Conflict diamonds trade-ban measures, etc, defined**

In these regulations, unless the context otherwise requires,—  
**authorised person** means an officer or employee of the Ministry of Foreign Affairs and Trade authorised in writing by the Minister for the purposes of regulation 5(1) to (5)

**conflict diamonds trade-ban measures** means any of the following measures that the Security Council of the United Nations has, under Article 41 of the Charter of the United Nations, called upon the Government of New Zealand and all other member States of the United Nations to apply

- (a) the measures (to prohibit the direct or indirect import of all rough diamonds from Sierra Leone) set out in paragraph 1 of resolution 1306 (2000) of that Council, adopted pursuant to that Charter on 5 July 2000; and
- (b) the measures (to prevent the direct or indirect import of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia) set out in paragraph 6 of resolution 1343 (2001) of that Council, adopted pursuant to that Charter on 7 March 2001; and
- (c) other similar measures (to prevent illicit trade in rough diamonds that fuels armed conflicts that affect international peace and security) also to give effect to decisions of that Council, being measures and decisions set out in 1 or more paragraphs of other resolutions of that Council adopted pursuant to that Charter either before or after the commencement of these regulations

**country** includes an international organisation or a State, territory, province, or other part of a country

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

**Interlaken Declaration** means the Interlaken Declaration of 5 November 2002 on the Kimberley Process Certification Scheme for Rough Diamonds

**international organisation** means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind

**Kimberley Process** means the international certification arrangement for rough diamonds adopted under the Interlaken Declaration

**Kimberley Process Certificate** means a certificate that meets the minimum requirements for certificates set out in the Schedule (which are the requirements specified in Part A of Annex 1 of the document (which accompanied the Interlaken Declaration) called the Kimberley Process Certification Scheme)

**Minister** means the Minister of Foreign Affairs and Trade  
New Zealand includes Tokelau

**original certificate** means,—

- (a) for rough diamonds that are, or are to be, imported, the certificate referred to in regulation 4(1)(b); and
- (b) for rough diamonds that are, or are to be, exported, the certificate referred to in regulation 5(2)

**participant** means a country that is a participant in the Kimberley Process

**rough diamonds** means diamonds that are—

- (a) unworked or simply sawn, cleaved or bruted; and

- (b) classified under heading 7102.10.00, 7102.21.00, or 7102.31.00 of the Standard Tariff (as defined in section 2(1) of the Tariff Act 1988).

### **Importation and exportation of rough diamonds**

#### **4 Importation of rough diamonds**

- (1) The importation into New Zealand of rough diamonds from a country is prohibited unless—
  - (a) the country is a participant; and
  - (b) the country has issued a Kimberley Process Certificate for the rough diamonds; and
  - (c) the original certificate is produced to the Customs or a Customs officer at or before the time of importation; and
  - (d) the rough diamonds are imported in a tamper-resistant container.
- (2) The importer must—
  - (a) keep the original certificate for 3 years after the time of importation; and
  - (b) produce the original certificate to any of the following on a request for the purpose within that 3-year period:
    - (i) an officer or employee of the Ministry of Foreign Affairs and Trade; and
    - (ii) a person authorised in writing by the Minister for the purposes of this subclause.

#### **5 Exportation of rough diamonds**

- (1) The exportation from New Zealand of rough diamonds is prohibited unless—
  - (a) the exporter holds a permission under this regulation; and
  - (b) the original certificate is produced to the Customs or a Customs officer at or before the time of exportation; and
  - (c) the rough diamonds are exported in a tamper-resistant container.
- (2) The Minister, or an authorised person, may, on application, grant a permission for the exportation of rough diamonds to a country by issuing a Kimberley Process Certificate.

- (3) A permission may be granted only if the country is a participant, and ceases to be in force if the country ceases to be a participant.
- (4) A permission granted under this regulation is subject to the following conditions:
  - (a) any condition notified in writing to the applicant at the time the permission is granted; and
  - (b) any condition specified on the Kimberley Process Certificate.
- (5) If the holder of a permission fails to comply with a condition of the permission the Minister, or an authorised person may, in writing, revoke the permission.
- (6) The holder of a permission must—
  - (a) keep a copy of the original certificate for 3 years after the time of exportation; and
  - (b) produce a copy of the original certificate to any of the following on a request for the purpose within that 3-year period:
    - (i) an officer or employee of the Ministry of Foreign Affairs and Trade; and
    - (ii) a person authorised in writing by the Minister for the purposes of this subclause.

**6 Other similar prohibitions not affected**

Nothing in regulation 4 or regulation 5 affects—

- (a) regulation 10A (importation of diamonds from Sierra Leone prohibited) of the United Nations Sanctions (Sierra Leone) Regulations 1997; or
- (b) regulation 13 (importation of diamonds from Liberia prohibited) of the United Nations Sanctions (Liberia) Regulations 2001; or
- (c) any other regulation made under the United Nations Act 1946 and that prohibits the importation into New Zealand, or exportation from New Zealand, of diamonds.

**7 Application of Customs and Excise Act 1996 to prohibited imports and prohibited exports**

- (1) The provisions of the Customs and Excise Act 1996 with respect to prohibited imports (except section 209) apply to diamonds whose importation is prohibited by regulation 4 in all respects as if the importation of the diamonds were prohibited under section 54 of the Customs and Excise Act 1996.
- (2) The provisions of the Customs and Excise Act 1996 with respect to prohibited exports (except section 209) apply to diamonds whose exportation is prohibited by regulation 5 in all respects as if the exportation of the diamonds were prohibited under section 56 of the Customs and Excise Act 1996.

Compare: SR 2001/134 r 14

**8 Detention of prohibited diamonds**

- (1) A reference in this regulation to prohibited diamonds is a reference to diamonds—
  - (a) whose importation is prohibited by regulation 4; or
  - (b) whose exportation is prohibited by regulation 5.
- (2) A Customs officer may detain any diamonds imported into New Zealand, or to be exported from New Zealand, that he or she suspects on reasonable grounds to be prohibited diamonds.

Compare: SR 2001/134 r 15(1), (2)

**9 Transitional provision**

Nothing in regulation 4 or regulation 5 applies to a diamond that is to be, or is being, imported into New Zealand, or exported from New Zealand, in accordance with a contract or deed entered into, or other legal obligation undertaken, before the commencement of these regulations.

**Acts in contravention or failures to  
comply****10 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 provision of these regulations.

Compare: SR 2001/134 r 17

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## Schedule

r 3

### Minimum requirements for certificates

Each certificate must—

- (a) have the title “Kimberley Process Certificate” ; and
- (b) state that “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds”.; and
- (c) also state the following:
  - (i) the authority by which it was issued; and
  - (ii) the date on which it was issued; and
  - (iii) the date on which it expires; and
  - (iv) the number of parcels in the shipment; and
  - (v) the country of origin of every parcel in the shipment (every parcel in the shipment being of unmixed, that is, from the same, origin); and
- (d) specify the following for the rough diamonds in the shipment:
  - (i) their exporter; and
  - (ii) their importer; and
  - (iii) their carat weight or mass; and
  - (iv) their value in US\$; and
  - (v) their classification (or heading) under the Harmonised Commodity Description and Coding System; and
- (e) be issued in English or, if issued in another language, incorporate an English translation; and
- (f) have unique numbering with the alpha-2 country code, according to ISO 3166-1; and
- (g) be tamper-resistant and forgery-resistant, and be validated by the relevant exporting authority.

Diane Morcom,  
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 on 14 January 2005, are made under the United Nations Act 1946 and for the purpose of enabling conflict diamonds trade-ban measures to be effectively applied. The regulations ensure rough diamonds may be imported into, or exported from, New Zealand, only in accordance with the Kimberley Process Certification Scheme adopted under the Interlaken Declaration.

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