

立法會
Legislative Council

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**Subcommittee on United Nations Sanctions
(Afghanistan) (Amendment) Regulation 2002 and
United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002**

Summary of deliberations prepared by the Legislative Council Secretariat

Purpose of paper

At the House Committee meeting on 25 October 2002, Members agreed that the subcommittee formed on 4 October 2002 to study the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 (the Amendment Regulation) and the relevant provisions of the principal Ordinance i.e. the United Nations Sanctions Ordinance (the Ordinance) should also scrutinise the United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002 (the Suspension Regulation).

2. This paper summarises members' major concerns about the two Regulations and the Ordinance, and the Administration's response to members' concerns raised during the discussions at the last two meetings on 30 October and 10 December 2002.

United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002

Background

3. The object of the Amendment Regulation is to give effect to the United Nations Security Council Resolution (UNSCR) 1390 of 16 January 2002. UNSCR 1390 seeks to amend certain sanctions imposed against the Taliban under UNSCR 1267 and against Usama bin Ladin, the Al-Qaida Organization and the Taliban under UNSCR 1333, which were made at the time when Afghanistan was still under the control of the Taliban.

Members' views

Validity of the Amendment Regulation

4. Members are of the view that the Amendment Regulation, made under section 3 of the Ordinance, is not valid. This is because “sanction” is defined in the Ordinance as “mandatory measures decided by the United Nations Security Council (UNSC), implemented against a place outside the People’s Republic of China”, whereas the Amendment Regulation imposes sanctions against "persons" instead of a place i.e. the territory of Afghanistan. Although the targets remain to be Usama bin Ladin, the Al-Qaida Organization and the Taliban, they are "persons" and not "places". To address the problem, the Administration should either -

- (a) Amend the Ordinance to extend its scope of coverage with regard to sanctions imposed by the UNSC; or
- (b) Introduce a new bill to implement those elements of UNSCR 1390 which could not be covered by the United Nations (Anti-Terrorism Measures) Ordinance (the Anti-Terrorism Ordinance); or
- (c) Impose sanctions by administrative means.

Giving effect to certain elements of UNSCR 1390 by way of the Anti-Terrorism Ordinance

5. Members are also of the view that provisions in the Amendment Regulation which overlap with those in the Anti-Terrorism Ordinance should be repealed to remove any ambiguities in initiating proceedings for an offence caught under both laws and having regard to the fact that regulations made under section 3 of the Ordinance are not subject to scrutiny by the Legislative Council (LegCo).

Wide powers of search and investigation under the Amendment Regulation

6. Members have pointed out that the powers of search and investigation under the Amendment Regulation are too wide and should be reduced to bring them in line with those under the Anti-Terrorism Ordinance.

The Administration's response

7. The Administration maintains its view that the Amendment Regulation is within the regulation making power of the Ordinance, as the Amendment Regulation was enacted to implement UNSCR 1390 and UNSCR 1390 is a continuation of UNSCRs 1267 and 1333, the target of which is Afghanistan.

8. The Administration has accepted members' view in paragraph 5 above, and will introduce an amendment regulation under the Ordinance to repeal those provisions in the Amendment Regulation which overlap with those in the Anti-Terrorism Ordinance, namely, the provisions on arms embargoes and prohibition against supply of funds. In response to members' request, the Administration has undertaken to provide a paper setting out the sections of the Amendment Regulation which could or could not be covered by the Anti-Terrorism Ordinance, and the reasons why they could not be covered by the Anti-Terrorism Ordinance.

9. On the different powers of search and investigation under the Amendment Regulation and the Anti-Terrorism Ordinance, the Administration has explained that this is because the Amendment Regulation and the Anti-Terrorism Ordinance are two separate exercises with different background and intention.

10. Having regard to the fact that both the Anti-Terrorism Ordinance and the Amendment Regulation were gazetted on 19 July 2002, Hon Margaret NG is of the view that the Administration should have made reference to the relevant provisions in the Anti-Terrorism Ordinance, which was passed by LegCo on 12 July 2002, when stipulating the powers of search and investigation under the Amendment Regulation. This is particularly important because the Anti-Terrorism Ordinance was enacted by LegCo through an open and transparent legislative process, whereas the Amendment Regulation was made by the Chief Executive (CE) without any scrutiny by LegCo.

Relevant discussion at a joint Panel meeting

11. Members may wish to note when the Administration consulted the Panel on Security and the Panel on Administration of Justice and Legal Services at a joint meeting on 30 November 2001 on measures to combat terrorism and terrorist financing, the Secretary for Security informed members that UNSCR 1373 could be implemented through the making of a regulation under section 3 of the Ordinance or the introduction of a new bill. In response to questions raised about the first option, the Solicitor General said that if UNSCR 1373 was to be implemented through the making of a regulation under section 3 of the Ordinance, an amendment would first need to be made to the Ordinance, as the Ordinance applied to places outside the People's Republic of China and UNSCR 1373 was not directed at a place.

United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002

Background

12. On 28 August 1997, UNSC passed UNSCR 1127 (1997) to impose certain measures on the National Union for the Total Independence of Angola (UNITA). To give effect to UNSCR 1127 (1997), sections 4D and 4E of the United Nations Sanctions (Angola) Regulation were made by CE on the instruction of the Ministry of Foreign Affairs (MFA) after consultation with the Executive Council (ExCo) to

prohibit the entry or transit of any person designated as a senior official of UNITA or an adult member of his immediate family through the Hong Kong Special Administrative Region (HKSAR) and cancel any travel document issued to such a person by the Director of Immigration.

13. UNSCR 1412 (2002) was passed on 17 May 2002 to suspend the measures for 90 days from 17 May 2002 to 14 August 2002. UNSCR 1432 (2002) was passed on 15 August 2002 to suspend the measures for an additional period of 90 days up to 13 November 2002.

14. The object of the Suspension Regulation, which has come into operation upon its gazettal on 18 October 2002, is to suspend the operation of sections 4D and 4E of the United Nations Sanctions (Angola) Regulation.

Members' views

15. Members consider it patently wrong that the Administration considers that the Director of Immigration could exercise the discretion conferred on him by the Immigration Ordinance to process entry applications from the senior officials of UNITA and their immediate family members during the period from 17 May 2002 to 17 October 2002 when the United Nations Sanctions (Angola) Regulation was still in force.

The Administration's response

16. The Administration has explained that due to the summer recess of ExCo, it was practically impossible for the Administration to give effect to the instruction of MFA to implement UNSCR 1412 by introducing a regulation under the Ordinance. The Administration considered it more appropriate to give effect to UNSCR 1412 and UNSCR 1432 before the Suspension Regulation was made by administrative means, i.e. the Director of Immigration could accept entry applications from senior officials of UNITA and their immediate family members and exercise his judgement as to whether the applicants concerned should be granted a visa to enter Hong Kong.

17. The Administration has pointed out that although the processing of visa applications might have commenced, under no circumstances would the Director of Immigration issue an entry visa until the law to suspend sections 4D and 4E of the United Nations Sanctions (Angola) Regulation had been enacted. The Administration has also pointed out that the Immigration Department has not received any applications from the senior officials of UNITA and their immediate family members during the period from 17 May 2002 to 17 October 2002.

18. Members disagree with the Administration and have requested it to provide a paper on why it considers it appropriate for the Director of Immigration to carry out UNSCR 1412 and UNSCR 1432 when the laws to implement the two Resolutions in Hong Kong had not yet been enacted. Hon Margaret NG has pointed out that if that

is the Administration's stance, then the Director of Immigration should not have forced the appellants in the right of abode cases to return to the Mainland when their cases were still being heard by the Court of Final Appeal.

United Nations Sanctions Ordinance

19. Members have asked the Administration whether it would consider amending the Ordinance to provide for regulations made under section 3 to be subject to scrutiny by LegCo. The Administration has replied that there is no pressing need to do so, as the Ordinance has been effective in implementing the Central People's Government's instructions with regard to the imposition of sanctions against places outside the People's Republic of China in accordance with UNSCRs.

Council Business Division 2
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