

立法會
Legislative Council

Ref : CB2/SS/12/01

**Subcommittee on United Nations Sanctions
(Afghanistan) (Amendment) Regulation 2002**

Background brief prepared by the Legislative Council Secretariat

**United Nations Sanctions (Afghanistan)
(Amendment) Regulation 2002 and
United Nations Sanctions Ordinance**

Background and purpose of paper

At the House Committee meeting on 4 October 2002, Members decided to form a subcommittee to study the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002, and the relevant provisions of the principal Ordinance i.e. the United Nations Sanctions Ordinance.

2. This paper provides details on Members' past discussions on the United Nations Sanctions Bill, and summaries Members' main concerns about the Amendment Regulation.

United Nations Sanctions Ordinance

3. The United Nations Sanctions Ordinance provides for the imposition of sanctions against places outside the People's Republic of China arising from Chapter 7 of the Charter of the United Nations, and matters incidental thereto or connected therewith.

4. The United Nations Sanctions Bill was introduced into the Provisional Legislative Council (PLC) on 9 July 1997. The former Secretary for Trade and Industry wrote (letter in **Appendix I**) to the Chairman of the House Committee and all other Members on 9 July 1997 seeking the House Committee's agreement for the Second Reading debate on the Bill to be resumed at the Council meeting on 16 July 1997.

5. The Bill was considered at the House Committee meeting on 11 July 1997. No Bills Committee was formed to scrutinise the Bill. At the meeting,

Members agreed to recommend to the President that the Second Reading debate on the Bill be resumed at the Council meeting on 16 July 1997.

6. The Bill was passed by the PLC on 16 July 1997 and came into operation on 18 July 1997. The relevant extract from the proceedings of the Council meeting on 16 July 1997 is in **Appendix II**.

Section 3 of the United Nations Sanctions Ordinance

7. Under section 3 of the Ordinance, the Chief Executive shall make regulations to give effect to a relevant instruction. The same section also provides that sections 34 and 35 of the Interpretation and General Clauses Ordinance shall not apply to such regulations made. As a result, these regulations are not required to be laid before the Legislative Council (LegCo), and are not subject to amendment by the Council.

8. The Administration has explained in the LegCo Brief on the Bill (**Appendix III**) the reason for not placing the regulations to be made by CE under the Bill, if passed, before the Council for approval is that United Nations sanctions are external affairs for which the Hong Kong Special Administrative Region (HKSAR) has no autonomy but may only conduct the same with the authorisation of the Central People's Government (CPG) (Article 13 of the Basic Law). This arrangement will ensure that the decision on whether to implement United Nations sanctions, and if so, the nature and scope of the sanctions, will remain with the CPG, while implementation of the sanctions within the HKSAR will be the responsibility of the HKSAR Government.

9. In the Legal Service Division report on the Bill (**Appendix IV**) presented to the House Committee meeting on 11 July 1997, Members' attention was drawn to the provision that regulations made under the Bill, if passed, would not be subject to the intervention of the Council.

Regulations made under the United Nations Sanctions Ordinance

10. Since its coming operation on 18 July 1997, 17 regulations and five amendment regulations have been made by CE under section 3 of the United Nations Sanctions Ordinance. A list of these regulations is in **Appendix V**.

United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002

11. The United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 was gazetted on 19 July 2002. The object of the Amendment Regulation is to give effect to United Nations Security Council Resolution (UNSCR) 1390

of 16 January 2002. UNSCR 1390 seeks to continue, amend and terminate certain sanctions imposed against the Taliban under UNSCR 1267 and against Usama bin Laden, the Al-Qaida Organization and the Taliban under UNSCR 1333. For Members' information, the principal Regulation was published in the Gazette on 23 June 2000 and the United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation was published in the Gazette on 12 October 2001 and had expired on 18 January 2002.

12. At the House Committee meeting on 4 October 2002, a number of queries and concerns were raised by Members. The relevant extract from the minutes of the meeting is in **Appendix VI**. In accordance with Members' instruction, these queries and concerns have been referred to the Administration.

Queries raised by the Legal Services Division on the Amendment Regulation

13. In scrutinising the Amendment Regulation, the Legal Service Division has sought clarifications from the Administration on a number of issues and queries. Members may wish to refer to **Appendix VII** for copies of the correspondence between the Division and the Administration.

United Nations (Anti-Terrorism Measures) Ordinance

14. Members may recall that the United Nations (Anti-Terrorism Measures) Bill, which sought to meet the mandatory elements of UNSCR 1373 and certain of the Special Recommendations on Terrorist Financing of the Financial Action Task Force, was passed by LegCo on 12 July 2002 and published in the Gazette on 19 July 2002, the same day on which the Amendment Regulation has come into operation. Members may wish to note that, unlike the Amendment Regulation which provides authorised officers with wide investigation and search powers, the Administration, in response to the concerns raised by members of the Bills Committee on the United Nations (Anti-Terrorism Measures) Bill, had proposed the following amendments, amongst others, to -

- (a) delete Schedules 2 and 3 providing authorised officers with wide investigation, seizure and detention powers and rely on powers of investigation, seizure and detention as were available under existing laws; and
- (b) introduce a new clause (section 19) to empower the Secretary for Security to make regulations to provide for matters such as any investigative, seizure and detention powers that may be required

in the future. Regulations made under section 19 shall be subject to the approval of LegCo.

These amendments were agreed to by the Council. For Members' reference, Schedule 2 of the Bill on evidence and information, Schedule 3 of the Bill on seizure and detention of property suspected to be terrorist property, and section 19 of the Ordinance on regulations are in **Appendices VIII to X**.

Council Business Division 2
Legislative Council Secretariat
17 October 2002

Appendix IV

PLC Paper No. LS 4/97-98

Paper for the House Committee Meeting on 11 July 1997

Legal Service Division Report on United Nations Sanctions Bill

Objects of the Bill

To empower the Chief Executive, upon the instruction of the Ministry of Foreign Affairs of the Central People's Government, to make regulations to implement economic sanctions against a place outside the People's Republic of China arising from decisions made by the United Nations Security Council.

Provisional LegCo Brief Reference

2. TIB CR14/46/13 issued by the Trade and Industry Bureau dated 8 July 1997.

Date of First Reading

3. 9 July 1997.

Comments

4. Hong Kong does not have any domestic legislation enabling the Government to impose on its own United Nations sanctions.

5. Previously such sanctions, take for instance, on Iraq, Angola, were implemented in Hong Kong through Orders in Council issued by the UK Government . These Orders lapsed at midnight, 30 June 1997.

6. In order to avoid a legal vacuum and to safeguard Hong Kong's reputation as a responsible trading and financial centre, the Central People's Government has agreed that the HKSAR government should enact legislation which will empower the Chief Executive, upon the instruction of the Ministry of Foreign Affairs, to make regulations to implement UN sanctions.

7. Such regulations, however, are not subject to intervention of the Provisional Legislative Council (clause 3(5)) since UN sanctions are external affairs for which the Central People's Government is responsible under the Basic Law.

8. A breach of such regulations on conviction on indictment shall be punishable by an unlimited fine and imprisonment for a term not exceeding 7 years (Clause 3(3)(b)). Such penalties are comparable to those specified in section 6A(2) of the Import and Export Ordinance (Cap.60) on restriction on import and export of strategic commodities.

Public Consultation

9. No public consultation has been held.

Consultation with the Provisional Legislative Council

10. No consultation has been arranged so far.

Recommendation

11. This Bill is to avoid a legal vacuum and is a legislative tool to effect decisions within the prerogative of the Central People's Government. The legal and drafting aspects of this Bill are in order and Members are recommended to support the Bill.

Prepared by

Ho Ying-chu, Anita
Assistant Legal Adviser
Provisional Legislative Council Secretariat
9 July 1997

Appendix I

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本署檔號 Our Ref.:

來函檔號 Your Ref.:

9 July 1997

Dr Hon LEONG Che-hung, JP
Chairman, House Committee
Provisional Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Dr Leong,

United Nations Sanctions Bill

The United Nations Sanctions Bill was introduced into the Provisional Legislative Council this afternoon. I write to seek the agreement of the House Committee of the Provisional Legislative Council to waive the normal notice period for the resumption of the second reading debate in respect of the Bill.

As I explained at the Provisional Legislative Council meeting this afternoon, the Bill seeks to give effect to what is entirely within the foreign affairs prerogative of the Central People's Government (CPG) as laid down in the Basic Law, and has been agreed with the CPG. It is imperative for the early passage of the Bill because -

- (a) the CPG has instructed the Chief Executive to introduce measures to implement certain United Nations (UN) sanctions in the SAR;
- (b) domestic legislation is required to enable the Chief Executive to carry out the instructions that he has received;
- (c) it is the express wish of the CPG that a legal vacuum should be avoided;

- (d) it is in the SAR's interest to implement UN sanctions so as to uphold its reputation as a responsible international financial and trading centre; and
- (e) it is necessary to fill the legal vacuum which has existed since the beginning of this month and which may be exploited for circumventing UN sanctions.

I should therefore be grateful for the agreement of the House Committee for the debate of the second reading of the Bill to be resumed at the sitting of the Provisional Legislative Council on 16 July 1997.

Yours sincerely,



(Miss Denise Yue)
Secretary for Trade & Industry

c.c. All other Provisional Legislative Council Members

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BILLS

PRESIDENT (in Cantonese): Second Reading of Bills.

Resumption of Second Reading Debate on Bills

UNITED NATIONS SANCTIONS BILL

Resumption of debate on Second Reading which was moved on 9 July 1997

PRESIDENT (in Cantonese): Does any Member wish to speak? Secretary for Trade and Industry, do you wish to speak?

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, I would like to express my heartfelt thanks to the House Committee for agreeing to exempting the United Nations Sanctions Bill from the required period of notice for the resumption of Second Reading debate.

We certainly need to set up expeditiously the necessary legal structure for the Hong Kong Special Administrative Region (SAR) to implement United Nations sanctions. To begin with, the People's Republic of China, as a member of the Security Council of the United Nations, must ensure that its responsibilities shall be fulfilled. Besides, our trade partners also need assurance that Hong Kong will not be involved in activities in breach of or in avoidance of United Nations sanctions.

The Central People's Government has given instruction to the Chief Executive to implement in the SAR several types of United Nations sanctions. The objective that the United Nations Sanctions Bill has to achieve is to provide the Chief Executive with the legislative tool to effect the instruction given to him, and the Central People's Government has indicated its approval to the Bill. Upon the passage of the Bill, the Chief Executive shall make the necessary regulations to give effect to the specific instruction given to him in respect of any particular United Nations sanction.

Madam President, I will move later an amendment relating to the translation of the text at the Committee stage of the Bill. I hereby recommend this Council to support the Bill.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the United Nations Sanctions Bill be read the Second time.

PRESIDENT (in Cantonese): Will those in favour please say "aye"?

(Members responded)

PRESIDENT (in Cantonese): Those against please say "no".

(No Member responded)

PRESIDENT (in Cantonese): I think the "ayes" have it. The "ayes" have it.

CLERK (in Cantonese): United Nations Sanctions Bill.

Committee Stage of Bills

CHAIRMAN (in Cantonese): Bills: Committee stage. Council is now in Committee.

UNITED NATIONS SANCTIONS BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Bill.

CLERK (in Cantonese): Clauses 1 and 3.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

CHAIRMAN (in Cantonese): Those against please say "no".

(No Member responded)

CHAIRMAN (in Cantonese): I think the "ayes" have it. The "ayes" have it.

CLERK (in Cantonese): Clause 2.

CHAIRMAN (in Cantonese): Secretary for Trade and Industry.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that clause 2 be amended as set out in the paper circularized to Members. This is a textual amendment to ensure effectively that the Chinese and English versions of the Bill are consistent with each other. Thank you, Madam Chairman.

Proposed amendment

Clause 2 (see Annex II)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Trade and Industry be approved.

CHAIRMAN (in Cantonese): Will those in favour please say "aye"?

(Members responded)

CHAIRMAN (in Cantonese): Those against please say "no".

(No Member responded)

CHAIRMAN (in Cantonese): I think the "ayes" have it. The "ayes" have it.

CLERK (in Cantonese): Clause 2 as amended.

CHAIRMAN (in Cantonese): Will those in favour please say "aye"?

(Members responded)

CHAIRMAN (in Cantonese): Those against please say "no".

(No Member responded)

CHAIRMAN (in Cantonese): I think the "ayes" have it. The "ayes" have it.

PRESIDENT (in Cantonese): Council will now resume.

PRESIDENT (in Cantonese): Bills: Third Reading. Secretary for Trade and Industry.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the

UNITED NATIONS SANCTION BILL

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is :That the

UNITED NATIONS SANCTION BILL

be read the Third time and do pass.

PRESIDENT (in Cantonese): I now put the question to you as stated.

Will those in favour please say "aye"?

(Members responded)

PRESIDENT (in Cantonese): Those against please say "no".

(Members responded)

PRESIDENT (in Cantonese): I think the "ayes" have it. The "ayes" have it.

CLERK (in Cantonese): United Nations Sanctions Bill.

Annex II

UNITED NATIONS SANCTIONS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>In the definition of "制裁"-</p> <p>(a) by deleting "針對中華人民共和國以外地方實施的" and substituting "由聯合國安全理事會決定針對中華人民共和國以外地方而實施的";</p> <p>(b) by deleting everything after "以及" and substituting "其他強制性措施".</p>

File Ref. : TIB CR 14/46/13

BRIEF FOR THE PROVISIONAL LEGISLATIVE COUNCIL

UNITED NATIONS SANCTIONS BILL

INTRODUCTION

At the meeting of the Executive Council on 8 July 1997, the Council ADVISED and the Chief Executive (CE) ORDERED that the United Nations Sanction Bill at the Annex should be introduced into the Provisional Legislative Council. (Annex not attached)

BACKGROUND AND ARGUMENT

Background

2. In Hong Kong, the imposition of sanctions resulting from security and foreign relations considerations is the responsibility of our sovereign government. Previously sanctions arising from decisions made by the UN Security Council¹ were implemented in Hong Kong through Orders in Council issued by the UK Government. The implementation of UN sanctions is necessary in order to enable our sovereign government to honour its international obligations. It is also necessary in order to safeguard Hong Kong's reputation as a responsible trading and financial centre and to prevent Hong Kong from becoming a conduit for those

¹The Security Council is an organ of the United Nations primarily responsible for the maintenance of international peace and security. Both China and the UK are permanent members of the Council.

seeking to supply goods, services and finance to prohibited destinations and persons connected with them, as identified in UN Security Council decisions.

3. Hong Kong does not have any domestic law enabling the Government to impose on its own UN Security Council sanctions. Previously, Hong Kong enforced a number of UN Security Council sanctions against Angola, Libya, Iraq and a few other places by way of Orders in Council of the UK. All these Orders in Council lapsed at midnight 30 June 1997.

Proposal

4. Since 1 July 1997, the decision to apply the UN Security Council sanctions in the HKSAR is within the foreign affairs prerogative of China. As a member of the UN and its Security Council, China has to fulfil her international obligation to implement UN sanctions. China has also confirmed that the Charter of the UN continues to apply to the HKSAR after 30 June 1997. Hence we need to put in place as soon as possible a mechanism to ensure the continued application and effective enforcement in the Hong Kong Special Administrative Region of economic sanctions imposed by the UN Security Council.

5. Under Article 48(8) of the Basic Law, the CE shall implement directives issued by the Central People's Government (CPG) in respect of relevant matters provided for in the Basic Law. This includes foreign affairs, which in turn cover UN sanctions. However, while a directive by the CPG is binding upon the CE, it will not *per se* empower him to give legislative effect to those sanctions by promulgation. Domestic legislation is required to enable the UN sanctions to be enforced locally.

6. We therefore propose that we should enact legislation which will empower the CE, upon instruction of the Ministry of Foreign Affairs (MFA) of the CPG, to make regulations to implement sanctions in the HKSAR against places outside the People's Republic of China arising from Chapter 7 of the Charter of the United Nations.

THE BILL

7. The Bill at the Annex has been agreed with the CPG. It seeks to empower the Chief Executive, upon the instruction of the Ministry of Foreign Affairs of the CPG, to make regulations to implement economic sanctions that are imposed by the UN Security Council.

8. Members' attention is drawn to Clause 3 (5) of the Bill. The reason for not placing the regulations to be made by the CE under the Bill, if passed, before the Provisional Legislative Council for approval is that UN sanctions are external affairs for which the HKSAR has no autonomy but may only conduct the same with the authorisation of the CPG (Article 13 of the Basic Law). This arrangement will ensure that the decision on whether to implement UN sanctions, and if so, the nature and scope of the sanctions, will remain with the CPG, while implementation of the sanctions within the HKSAR will be the responsibility of the HKSAR Government.

9. Subject to the approval of the Bill by this Council, the CE will make, under the enabling provisions of the Bill, regulations to carry out specific sanctions actions as instructed by the CPG. The CE has already received specific instructions in this regard.

FINANCIAL AND STAFFING IMPLICATIONS

10. There will be no additional financial and staffing implications.

ECONOMIC IMPLICATIONS

11. The implementation of economic sanctions imposed by the UN Security Council will entail some loss of trade for Hong Kong. However, from the experience in recent years, such a trade loss is normally small. On the other hand, our continued adherence to these sanctions will reflect well on Hong Kong as a responsible trader, and thus should be helpful for sustaining our good trade relations with the major industrialized countries. This will be much to our benefit in the longer term.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be -

Publication in the Gazette	8 July 1997
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First and second readings	9 July 1997
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Resumption of second reading	To be notified
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PUBLICITY

13. A press release will be issued. A spokesman will be available to handle media and public enquiries.

ENQUIRIES

14. All enquiries should be addressed to Miss Peggy Law, Assistant Secretary for Trade and Industry, at Tel: 2810 3949 (Fax: 2840 1621).

Trade and Industry Bureau
8 July 1997

Appendix IV

PLC Paper No. LS 4/97-98

Paper for the House Committee Meeting on 11 July 1997

Legal Service Division Report on United Nations Sanctions Bill

Objects of the Bill

To empower the Chief Executive, upon the instruction of the Ministry of Foreign Affairs of the Central People's Government, to make regulations to implement economic sanctions against a place outside the People's Republic of China arising from decisions made by the United Nations Security Council.

Provisional LegCo Brief Reference

2. TIB CR14/46/13 issued by the Trade and Industry Bureau dated 8 July 1997.

Date of First Reading

3. 9 July 1997.

Comments

4. Hong Kong does not have any domestic legislation enabling the Government to impose on its own United Nations sanctions.

5. Previously such sanctions, take for instance, on Iraq, Angola, were implemented in Hong Kong through Orders in Council issued by the UK Government . These Orders lapsed at midnight, 30 June 1997.

6. In order to avoid a legal vacuum and to safeguard Hong Kong's reputation as a responsible trading and financial centre, the Central People's Government has agreed that the HKSAR government should enact legislation which will empower the Chief Executive, upon the instruction of the Ministry of Foreign Affairs, to make regulations to implement UN sanctions.

7. Such regulations, however, are not subject to intervention of the Provisional Legislative Council (clause 3(5)) since UN sanctions are external affairs for which the Central People's Government is responsible under the Basic Law.

8. A breach of such regulations on conviction on indictment shall be punishable by an unlimited fine and imprisonment for a term not exceeding 7 years (Clause 3(3)(b)). Such penalties are comparable to those specified in section 6A(2) of the Import and Export Ordinance (Cap.60) on restriction on import and export of strategic commodities.

Public Consultation

9. No public consultation has been held.

Consultation with the Provisional Legislative Council

10. No consultation has been arranged so far.

Recommendation

11. This Bill is to avoid a legal vacuum and is a legislative tool to effect decisions within the prerogative of the Central People's Government. The legal and drafting aspects of this Bill are in order and Members are recommended to support the Bill.

Prepared by

Ho Ying-chu, Anita
Assistant Legal Adviser
Provisional Legislative Council Secretariat
9 July 1997

UNITED NATIONS SANCTIONS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the definition of "制裁"- (a) by deleting "針對中華人民共和國以外地方實施的" and substituting "由聯合國安全理事會決定針對中華人民共和國以外地方而實施的"; (b) by deleting everything after "以及" and substituting "其他強制性措施。".

Appendix V

Regulations made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537)

1. United Nations Sanctions (Iraq) (Control of Gold, Securities, Payments and Credits) Regulation;
2. United Nations Sanctions (Iraq) Regulation;
3. United Nations Sanctions (Libya) Regulation;
4. United Nations Sanctions (Libya) (Prohibition of Flights) Regulation;
5. United Nations Sanctions (Arms Embargoes) Regulation;
6. United Nations Sanctions (Angola) Regulation;
7. United Nations Sanctions (Sierra Leone) (Immigration Control) Regulation;
8. United Nations Sanctions (Federal Republic of Yugoslavia) (Prohibition on Terrorist Activity) Regulation;
9. United Nations Sanctions (Libya) (Suspension of Operation) Regulation 1999;
10. United Nations Sanctions (Libya) (Prohibition of Flights) (Suspension of Operation) Regulation 1999;
11. United Nations Sanctions (Afghanistan) Regulation;
12. United Nations Sanctions (Eritrea and Ethiopia) Regulation;
13. United Nations Sanctions (Sierra Leone) (Prohibition Against Importation of Diamonds) Regulation;
14. United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation;
15. United Nations Sanctions (Liberia) Regulation;
16. United Nations Sanctions (Sierra Leone) (Prohibition Against Importation of Diamonds) Regulation 2002;
17. United Nations Sanctions (Liberia) Regulation 2002;

18. United Nations Sanctions (Arms Embargoes) (Amendment) Regulation 1998;
19. United Nations Sanctions (Arms Embargoes) (Amendment) Regulation 2001;
20. United Nations Sanctions (Angola) (Amendment) Regulation 1998;
21. United Nations Sanctions (Angola) (Amendment) Regulation 1999; and
22. United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002.

Appendix VI

Extract from the minutes of meeting of House Committee of the Legislative Council held on 4 October 2002

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(b) Subsidiary legislation gazetted between 12 July 2002 and 27 September 2002
(*LC Paper No. LS 131/01-02*)

15. The Legal Adviser said that a total of six items of subsidiary legislation subject to amendment by LegCo were gazetted between 12 July and 27 September 2002, and would be tabled in Council on 9 October 2002.

16. Members did not raise any query on these items of subsidiary legislation.

17. The Chairman reminded Members that amendments, if any, to these items of subsidiary legislation should be made by the Council meeting on 6 November 2002, or the Council meeting on 27 November 2002, if extended by resolution.

18. The Legal Adviser informed Members that the report also covered the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 which was made by CE under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. The Legal Adviser explained that as the section also provided that sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) were not applicable to the regulations so made, the Amendment Regulation was not required to be laid before LegCo and the Council had no power to amend it.

19. The Legal Adviser said that Members might wish to note that -

- (a) it was doubtful whether the Amendment Regulation was within the regulation making powers of Cap. 537 as "sanction" was defined in the Ordinance as "mandatory measures adopted by United Nations Security Council implemented against a place outside the People's Republic of China". The Amendment Regulation no longer imposed sanctions against a place i.e. the territory of Afghanistan, while the targets remained to be Usama bin Ladin, the Al-Qaida Organization and the Taliban which were not "places";

- (b) certain sanctions imposed by the Amendment Regulation overlapped provisions in the United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002) which had come into operation on 23 August 2002. For instance, on the prohibition of the supply of weapons, the Amendment Regulation imposed strict liability subject to the availability of a statutory defence while the Anti-Terrorism Ordinance required the proof of mens rea; and
 - (c) the Amendment Regulation provided the Administration with wide powers of search and investigation.
20. Mr James TO enquired about the Administration's stance regarding the query raised by the Legal Service Division that the targets of sanctions, such as Usama bin Ladin, were not places; hence it was doubtful whether the Amendment Regulation was within the regulation making powers of the principal Ordinance. Mr James TO said that as sections 34 and 35 of Cap. 1 were not applicable to the regulations made under section 3 of the principal Ordinance, the Ordinance should be reviewed in this respect as without the power to intervene, LegCo could not exercise its monitoring role properly.
21. Mr TO further said that the United Nations (Anti-Terrorism Measures) Ordinance, which had just come into operation, represented the Council's latest "consensus" on anti-terrorism measures and implementing the relevant UNSCRs. He wondered why the Administration imposed strict liability in respect of the offence of the supply of weapons under the Amendment Regulation, while the United Nations (Anti-Terrorism Measures) Ordinance required the proof of mens rea for the same offence. Mr TO considered that the Amendment Regulation should be studied in detail. He added that he did not have strong views on whether the Amendment Regulation should be studied by a Panel or a subcommittee.
22. Miss Margaret NG sought clarification as to whether the wide powers of search and investigation provided under the Amendment Regulation were within the scope of the principal Ordinance. She considered that the relevant provisions of the principal Ordinance should also be examined. She supported the formation of a subcommittee.
23. Mr IP Kwok-him, Dr YEUNG Sum and Ms Emily LAU also expressed support that the Amendment Regulation should be studied by a subcommittee. Ms LAU added that the queries raised by Members should be conveyed to the Administration before the subcommittee met.
24. The Legal Adviser said that the principal Ordinance empowered CE to make regulations to the effect that a contravention of any such regulation

should be an offence and be punishable on conviction on indictment by an unlimited fine and imprisonment for a term not exceeding seven years. The Legal Adviser further said that regarding the question of the targets of sanctions not being "places", the Administration apparently did not consider that there was any problem. The Legal Adviser added that as the Amendment Regulation imposed serious criminal liabilities, it should be carefully considered.

25. The Chairman said that the queries raised by Members should be answered by the Administration. She proposed that a subcommittee be formed and representatives of the Administration, including those from the Security Bureau and the Commerce, Industry and Technology Bureau should be invited to meet with the subcommittee. Members agreed. The following Members agreed to join : Ms Cyd HO, Miss Margaret NG, Mr James TO, Mr LAU Kong-wah, Ms Emily LAU and Ms Audrey EU.

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Appendix VII

LS/S/41/01-02

Secretary for Commerce,
Industry and Technology Bureau
Level 29, One Pacific Place,
88 Queensway,
Hong Kong.

24 July 2002

BY FAX

Total no. of page(s) : 3

(Attn : Ms Anita Chan
Principal Assistant Secretary)

Dear Ms Chan,

United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 (L.N. 134 of 2002)

We are scrutinizing the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 (L.N. 1134 of 2002) with a view to preparing a report to Members of the House Committee. We understand that by virtue of section 3(5) of the United Nations Sanctions Ordinance (Cap. 537), sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) do not apply to the Amendment Regulation. Nevertheless, we shall be grateful if you would clarify the following :

1. According to the explanatory note, the Amendment Regulation is made to give effect to Resolution 1390. Resolution 1390 requires member States to take certain measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them. We note that Resolution 1390 does not impose sanctions against the territory of Afghanistan. It is different from Resolutions 1267 or 1333 which were made at the time when Afghanistan was under the control of the Taliban.

2. According to the long title of the United Nations Sanctions Ordinance, the purpose of that Ordinance is to provide for the imposition of sanctions against places outside the People's Republic of China arising from Chapter 7 of the Charter of the United Nations. "Sanction" is defined to mean certain mandatory measures decided by the United Nations Security Council implemented against a place outside the People's Republic of China. Please explain how the Amendment Regulation falls within the empowering provision in the Ordinance.

3. The United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002) ("the Related Ordinance") was published in the Gazette on 19 July 2002, the same day when the Amendment Regulation was published. The Related Ordinance contains, inter alia, provisions for freezing of funds and prohibition against the supply of weapons. Section 4 of the Related Ordinance enables the Chief Executive to specify the name or names of a person where the person is designated by the Committee as a terrorist or terrorist associate. Usama bin Laden, members of the Al-Qaida organization, the Taliban and their associates are persons so designated by the Committee and would in due course be specified by the Chief Executive under the Related Ordinance. To give effect to Resolution 1390, wouldn't it be sufficient to :

- (a) terminate the measures imposed in paragraph 4(a) of Resolution 1267;
- (b) implement paragraph 2(b) of Resolution 1390; and
- (c) prohibit the provision of certain technical advice, assistance or training?

4. Insofar as the provisions in the Amendment Regulation and those in the Ordinance that implement the same measures (such as the freezing of funds and supply of arms and related material), please explain why the provisions are not the same. In particular, the new sections 3B, 3C and 3E added by the Amendment Regulation relating to the supply, delivery, exportation and carriage of prohibited goods are different from section 9 of the Related Ordinance relating to the supply of weapon in that the former impose strict liability subject to the availability of a statutory defence. How does the Administration intend to enforce the two separate sets of legislation?

5. Why do the new sections 3, 3B, 3C, 3D, 3E and 3F added by the Amendment Regulation apply to a person acting outside the HKSAR who is both a Hong Kong permanent resident and a Chinese national? Why is this different from section 3 of the Related Ordinance and what does "acting" mean?

6. The new sections 3F, 3G, 3H, 3I , 3J and 3K provide the Administration with unfettered powers of search and investigation. Similar powers (subject to limited checks and balance) have been deleted from the Schedules to the United Nations (Anti-Terrorism Measures) Bill during the Committee Stage by an amendment moved by the Administration. Please justify why these powers are introduced in the Amendment Regulation. In particular, the new sections 3H, 3I and 3J are new investigation powers given to an authorized officer if he has reason to suspect that the new section 3E(2) is contravened. Please justify why these powers are necessary given that powers to search and obtain information have been provided in the Schedule.

7. During scrutiny of the United Nations (Anti-Terrorism Measures) Bill, Members have raised objection to the provisions in Schedule 2 of that Bill, which are modelled on the provisions in the Schedule to the United Nations Sanctions (Afghanistan) Regulation. Has the Administration considered the views of Members when amending the Schedule under section 12 of the Amendment Regulation?

8. What is the purpose and effect of designation by the Chief Executive under the new section 10?

I would appreciate it if you could let me have your reply in bilingual versions.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. LA
SALA1

Our Ref : CIB CR 121/53/1

20 August 2002

Ms Bernice Wong
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
(Fax No : 2877 5029)

Dear Ms Wong,

**United Nations Sanctions (Afghanistan)
(Amendment) Regulation 2002 (L.N. 134 of 2002)**

Thank you for your letter of 24 July 2002 seeking to clarify some points related to the captioned Regulation (Amendment Regulation). Our replies, arranged in the same sequence of the paragraph numbers of your letter, are as follows:

(a) Paragraphs 1 and 2

We consider that the making of such a regulation is within the power of the UNS Ordinance for the following reasons:

- (i) UNSCR 1390 seeks to extend or terminate as appropriate certain sanctions imposed under UNSCR 1267 and 1333, which were passed by the Security Council to impose sanctions against Afghanistan. As such, UNSCR 1390 is by and large a natural continuation of UNSCR 1267 and 1333, which have been given effect in the HKSAR by the making of the UNS (Afghanistan) Regulation and UNS (Afghanistan)(Arms Embargoes) Regulation, under the UNS Ordinance;

- (ii) It is beyond dispute that the Taliban, Usama bin Laden and members of Al-Qaida organization are connected with Afghanistan; and
- (iii) the Security Council could have simply terminated the sanctions as imposed by UNSCR 1267 and 1333 if it did not intend to have UNSCR 1390 connected with Afghanistan, given that some of its provisions are similar to that of UNSCR 1373, which was passed earlier. It is evident that by extending and terminating certain previously endorsed sanctions against Afghanistan, the Security Council had intended to give special regard to the situation in the country through UNSCR 1390.

(b) Paragraph 3

The implementation of UNSCR 1373 and UNSCR 1390 involved two separate exercises under two separate instructions from the Ministry of Foreign Affairs of the People's Republic of China (MFA). The background and intention of the two UNSCRs are different from each other, although some of their provisions appear to be overlapping to a certain extent. We therefore consider it appropriate to implement the two UNSCRs through separate legislation.

(c) Paragraph 4

As mentioned, the introduction of the Amendment Regulation and the United Nations (Anti-Terrorism Measures) Ordinance (Anti-Terrorism Ordinance) were two separate exercises implementing two different UNSCRs, with the Anti-Terrorism Ordinance aimed also at giving effect to certain special recommendations made by the Financial Action Task Force on Money Laundering to combat terrorist financing. Our legal advice is that the Anti-Terrorism Ordinance and the Amendment Regulation have effectively implemented UNSCRs 1373 and 1390 respectively, and the provisions contained therein reflect the requirements of the two UNSCRs.

Sections 3B, 3C and 3E of the Amendment Regulation are included to give effect to paragraph 2(c) of UNSCR 1390, while section 9 of the Anti-Terrorism Ordinance seeks to give effect to paragraph 2(a) of UNSCR 1373. The wordings used in these paragraphs are not identical. On enforcement, the Administration intends to enforce the two pieces of legislation in accordance

with their respective provisions. In the event that an offence is caught under both the Anti-Terrorism Ordinance and the Amendment Regulation, the prosecution will decide on the appropriate proceedings to be initiated having regard to the circumstances pertaining to each individual cases.

(d) Paragraph 5

The approach adopted in the Amendment Regulation follows the precedents under other UNS Regulations. We consider the approaches adopted in both the Anti-Terrorism Ordinance and the Amendment Regulation appropriate to discharge the obligations in the respective UNSCRs.

As for your technical enquiry with regard to the word "acting", please note that "a person acting elsewhere who is both a Hong Kong person under the law of the HKSAR" (section 3(3)(b)(i) and (ii) of the Amendment Regulation) does not differ in substance from "any person outside the HKSAR who is under the law of the HKSAR" (section 3(b)(i) and (ii) of the Anti-Terrorism Ordinance). They simply represent different drafting styles.

(e) Paragraph 6

Powers under sections 3F, 3G, 3H, 3I, 3J and 3K are provided to facilitate the enforcement of sections 3B, 3C and 3E in connection with the prohibition on the supply, delivery, and export of prohibited goods to relevant persons and undertakings, which do not exist in the previous UNS (Afghanistan) Regulation. Sections 3B, 3C and 3E, together with their associated enforcement provisions, are largely modelled on the expired UNS (Liberia) Regulation, in view of the similarities between the corresponding paragraphs in the relevant UNSCRs. Our legal advice is that the relevant provisions on search and investigation powers are consistent with the human rights provisions of the Basis Law. Similar provisions are included in some other regulations made under the UNS Ordinance as well, and over the years we have not been aware of any complaints in this regard.

(f) Paragraph 7

As explained, the introduction of the Amendment Regulation and the Anti-Terrorism Ordinance are two separate exercises with different background and intention. The powers as provided in the Schedule to the Regulation are required for the purpose of enforcing the Regulation.

As for the Anti-Terrorism Ordinance, the original Schedule 2 was deleted taking into considerations the comments of the Bills Committee concerned. Enforcement agencies will rely on general investigation powers under other existing legislation to enforce the Ordinance. Meanwhile, section 19 of the Ordinance also provides that regulations may be made to further provide for such powers.

(g) Paragraph 8

Under UNSCR 1390, the Committee established pursuant to UNSCR 1267 is responsible for maintaining and constantly updating a list containing persons, undertakings and entities, against whom the sanctions under UNSCR 1390 are imposed. Likewise, these parties are the targets of the prohibitive provisions under the Amendment Regulation, which has been enacted to give effect to UNSCR 1390 in the HKSAR. To catch the said parties by the Amendment Regulation, we need to publish a notice in the Gazette designating them as persons, undertakings or entities referred to in the list maintained by the Committee. From a public policy standpoint, the gazettal can also serve the purpose of informing the public of the parties who are subject to prohibitions under the Amendment Regulation, thereby avoiding careless contraventions of the legislation.

The definitions of "relevant person" and "relevant undertaking" refer to the Chief Executives designations pursuant to section 10.

Yours sincerely,

(Anita Chan)
for Secretary for Commerce, Industry and Technology

附表 2

[第 12(1)、14(8) 及
(9) 及 18 條]

證據及資料

1. 獲授權人員可要求人士提供資料等

(1) 在不損害本條例任何其他條文或任何其他法律的原則下，獲授權人員可要求任何在特區或居於特區的人，向該人員提供該人管有或控制的該人員為確保本條例獲遵從或為偵查規避本條例的情況而需要的任何資料，或向該人員交出該人管有或控制的該人員為確保本條例獲遵從或為偵查規避本條例的情況而需要的任何物料，而被要求的人須在該要求所指明的時間內及按該要求所指明的方式遵從該要求。

(2) 第(1)款不得視為規定任何曾代表任何人的大律師或律師將他以該身分所獲得的任何受保密權涵蓋的通訊披露。

(3) 凡任何人因沒有應根據本條提出的要求提供資料或交出物料而被定罪，裁判官或法庭可作出命令，規定該人在該命令所指明的限期內提供有關資料或交出有關物料。

(4) 本條所賦予要求任何人交出物料的權力，包括就如此交出的任何屬文件的物料取得副本或摘錄的權力，以及要求該人(如該人是法人團體，則要求屬該法人團體的現任或已卸任的高級人員或正受僱於該法人團體的任何其他人)就上述文件提供解釋的權力。

2. 手令的發出

(1) 如任何裁判官或法官根據任何警務人員、海關人員或獲授權人員經宣誓而作的告發而信納——

- (a) 有合理理由懷疑有人已經或正在犯本條例所訂的罪行，並有合理理由懷疑與犯該罪行有關的證據，可在該告發所指明的任何處所或在如此指明的任何車輛、船舶或飛機中發現；或
- (b) 任何理應已根據第1條交出但尚未交出的物料，可在任何上述處所或在任何上述車輛、船舶或飛機中發現。

則他可批出搜查手令，授權任何警務人員、海關人員或獲授權人員，連同任何其他在該手令中指名的人及任何其他警務人員或海關人員，於自該手令的日期起計的一個月內，隨時進入該告發所指明的處所或如此指明的車輛、船舶或飛機所在的任何處所(視屬何情況而定)，以及搜查該處所或車輛、船舶或飛機(視屬何情況而定)。

(2) 獲第(1)款所指的手令授權的人在行使該款所賦予的任何權力之前或之時，須應要求出示其身分的證據及已獲授權的證據。

(3) 任何藉上述手令獲授權搜查任何處所或任何車輛、船舶或飛機的人，可搜查在該處所、車輛、船舶或飛機中發現的人，或他有合理理由相信不久前離開或即將進入該處所、車輛、船舶或飛機的人，並可檢取該處所、車輛、船舶或飛機中或在上述的人身上發現，而他有合理理由相信是與犯第(1)款所提述的罪行有關的證據的任何物料，或他有合理理由相信是理應已根據第1條交出的任何其他物料，並就任何上述物料採取看來是必需的任何其他步驟，以保存上述物料和防止其被干擾：

但依據任何根據第(1)款發出的手令對任何人作搜查，只可由與該人性別相同的人進行。

UNITED NATIONS (ANTI-TERRORISM MEASURES) BILL

C525

SCHEDULE 2

[ss. 12(1), 14(8) &
(9) & 18]

EVIDENCE AND INFORMATION

1. Authorized officer may require person to furnish information, etc.

(1) Without prejudice to any other provision of this Ordinance or any other law, an authorized officer may request any person in or resident in the HKSAR to furnish to him any information, or to produce to him any material in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Ordinance, and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in subsection (1) shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce material when requested so to do under this section, the magistrate or court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the material.

(4) The power conferred by this section to request any person to produce material shall include the power to take copies of or extracts from any material which is a document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of such document.

2. Issue of warrant

(1) If any magistrate or judge is satisfied by information on oath given by any police officer, customs officer or authorized officer that—

- (a) there is reasonable ground for suspecting that an offence under this Ordinance has been or is being committed and that evidence in relation to the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) any material that ought to have been produced under section 1 and has not been so produced is to be found on any such premises or in any such vehicle, ship or aircraft, together with any other persons named in the warrant and any other police or customs officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises or, as the case may be, the vehicle, ship or aircraft.

(2) Before or on exercising any power conferred by subsection (1), a person authorized by any such warrant shall, if requested so to do, produce evidence of his identity and authority.

(3) A person authorized by any such warrant to search any premises or any vehicle, ship or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, ship or aircraft and may seize any material found on the premises or in the vehicle, ship or aircraft or on such person that he has reasonable ground to believe to be evidence in relation to the commission of an offence referred to in subsection (1) or any other material that he has reasonable ground to believe ought to have been produced under section 1 and may take in relation to any such material any other steps that may appear necessary for preserving it and preventing interference with it:

Provided that no person shall in pursuance of any warrant issued under subsection (1) be searched except by a person of the same sex.

(4) 任何人憑藉本條獲賦權進入任何處所、車輛、船舶或飛機，可為此目的而使用合理所需的武力。

(5) 根據本條取去的任何物料或物件，可予保留3個月；如在該段期間內就第(1)(a)款所提述的罪行有任何與該等物料或物件有關的法律程序展開，則可保留至該等法律程序結束為止。

(6) 任何人依據根據本附表作出的要求而提供的資料或交出的物料（包括所交出的任何屬文件的物料的任何副本或摘錄），以及根據第(3)款自任何人處檢取的物料，不得被披露，但在下述情況下則除外——

(a) 在該人的同意下披露：

但僅以另一人的受僱人或代理人的身分取得資料或管有物料的人不得給予本段所指的同意，然而該項同意可由任何本身有權享有該資料或管有該物料的人給予；

(b) 向任何本可根據本附表獲賦權要求提供或交出該資料或物料的人披露；

(c) 在行政長官授權下，向聯合國的任何機關或向任何任職於聯合國的人或向中華人民共和國以外任何地方的政府披露，目的是協助聯合國或該政府確使由聯合國安全理事會就恐怖分子或與恐怖分子有聯繫者而決定的措施獲遵從或偵查規避該等措施的情況，但該資料或物料須是在中華人民共和國外交部批准的情況下經由中華人民共和國外交部轉交的；或

(d) 為了就本條例所訂的罪行提起任何法律程序而披露，或在其他情況下為了該等法律程序的目的而披露。

3. 罪行

任何人——

- (a) 無合理辯解而拒絕或沒有在指明的時間（如無指明的時間，則為一段合理的時間）內按指明的方式遵從由任何獲賦權根據本附表提出要求的人所提出的任何要求；
- (b) 故意或罔顧真偽地向任何根據本附表行使其權力的人提供任何在要項上屬虛假的資料或解釋或交出任何在要項上屬虛假的文件；
- (c) 故意妨礙任何根據本附表行使其權力的人；或
- (d) 出於規避本附表的施行的意圖而銷毀、破損、毀損、隱藏或移去任何物料，即屬犯罪。

4. “物料”的涵義

在本附表中，“物料”(material)包括任何簿冊、文件或其他任何形式的紀錄，以及任何物件或物質。

(4) Where, by virtue of this section, a person is empowered to enter any premises, vehicle, ship or aircraft, he may use such force as is reasonably necessary for that purpose.

(5) Any material or article of which possession is taken under this section may be retained for a period of 3 months or, if within that period there are commenced any proceedings for an offence referred to in subsection (1)(a) to which it is relevant, until the conclusion of those proceedings.

(6) No information furnished or material produced (including any copy of or extract from any material which is a document produced) by any person in pursuance of a request made under this Schedule, and no material seized under subsection (3) shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the material was produced or the person from whom the material was seized:

Provided that a person who has obtained information or is in possession of a material only in his capacity as a servant or agent of another person may not give consent for the purposes of this paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that material in his own right;

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced;

- (c) on the authority of the Chief Executive, subject to the information or material being transmitted through and with the approval of the Ministry of Foreign Affairs of the People's Republic of China, to any organ of the United Nations or to any person in the service of the United Nations or to the Government of any place outside the People's Republic of China for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to a terrorist or terrorist associate decided upon by the Security Council of the United Nations; or

- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Ordinance.

3. Offences

Any person 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 by any person who is empowered to make it;
 - (b) intentionally or recklessly furnishes any information, explanation or document which is false in a material particular to any person exercising his powers under this Schedule;
 - (c) intentionally obstructs any person in the exercise of his powers under this Schedule; or
 - (d) with intent to evade this Schedule, destroys, mutilates, defaces, secretes or removes any material,
- shall be guilty of an offence.

4. Meaning of “material”

In this Schedule, “material” (物料) includes any book, document or other record in any form whatsoever, and any article or substance.

附表 3

[第 12(2)、14(9)、17(1)
及 (3) 及 18 條]

懷疑是恐怖分子財產的財產的檢取及扣留

1. 釋義

在本附表中，除文意另有所指外——

“法庭” (court) 指原訟法庭；

“被檢取的財產” (seized property) 指根據第 2 條被檢取的任何財產；

“輸出” (exported) 就任何財產而言，包括為了輸出而運到特區任何地方的財產。

2. 獲授權人員的權力

(1) 為施行本條例，任何獲授權人員——

- (a) 可截停、登上及搜查任何已抵達特區的船舶、飛機、車輛或鐵路列車（軍用船艦或軍用飛機除外），並可在其逗留特區期間一直留在其上；
- (b) 可搜查任何抵達特區的人，或任何即將離開特區的人；
- (c) 可搜查任何輸入特區或將從特區輸出的物品；
- (d) 如有理由懷疑任何船舶、飛機、車輛或鐵路列車內有任何恐怖分子財產，可截停、登上及搜查該船舶、飛機、車輛或鐵路列車；
- (e) 如有理由懷疑任何地方或處所內有任何恐怖分子財產，而如要取得根據第 (2) 款發出的手令並非切實可行的話，則可無須有該手令而進入及搜查該地方或處所；或
- (f) 在下述情況下，可截停及搜查任何人，及搜查任何人的財產——
 - (i) 該獲授權人員有理由懷疑該人實際保管有任何恐怖分子財產；或
 - (ii) 該人在任何發現有任何恐怖分子財產的船舶、飛機、車輛、鐵路列車、地方或處所之內被發現。

(2) 凡任何裁判官鑑於任何人的誓詞而覺得有合理因由懷疑任何地方有任何恐怖分子財產，或有人就該財產已犯了或即將犯違反本條例的規定的罪行，該裁判官可藉其向任何獲授權人員發出手令，賦權該人員於日間或晚間，進入在該手令上指名的地方及在該處搜尋任何恐怖分子財產，並且檢取、移走及扣留任何恐怖分子財產。

(3) 為達到根據第 (1) 款搜查船舶或飛機的目的——

- (a) 香港海關關長或警務處處長可藉親筆簽署的書面命令，扣留船舶不超過 12 小時，或扣留飛機不超過 6 小時；及
- (b) 政務司司長可藉親筆簽署的書面命令，延長扣留船舶或飛機的限期；如屬船舶，則可將限期延長不超過 12 小時，如屬飛機，則可將限期延長不超過 6 小時。

任何根據本款發出的命令，須說明該命令自何時起有效及其有效期。

(4) 任何獲授權人員如有理由懷疑任何物品是恐怖分子財產，可檢取、移走及扣留該物品。

(5) 任何獲授權人員可——

- (a) 破啓他獲本條賦權進入及搜查的任何地方或處所的任何內外門戶；
- (b) 強行登上他獲本條賦權登上及搜查的任何船舶、飛機、車輛或鐵路列車；

UNITED NATIONS (ANTI-TERRORISM
MEASURES) BILL

C529

SCHEDULE 3

[ss. 12(2), 14(9), 17(1)
& (3) & 18]SEIZURE AND DETENTION OF PROPERTY SUSPECTED
TO BE TERRORIST PROPERTY

1. Interpretation

In this Schedule, unless the context otherwise requires—

“court” (法庭) means the Court of First Instance;
“exported” (輸出)，in relation to any property, includes the property being brought to any place in the HKSAR for the purpose of being exported;
“seized property” (被檢取的財產) means any property seized under section 2.

2. Powers of authorized officers

(1) For the purposes of this Ordinance, any authorized officer may—

- (a) stop, board and search any ship, aircraft, vehicle or train which has arrived in the HKSAR (not being a ship of war or a military aircraft), and remain thereon as long as it remains in the HKSAR;
- (b) search any person arriving in the HKSAR or about to depart from the HKSAR;
- (c) search any thing imported into or to be exported from the HKSAR;
- (d) stop, board and search any ship, aircraft, vehicle or train if he has reason to suspect that there is therein any terrorist property;
- (e) without a warrant issued under subsection (2) where it would not be practicable to obtain such a warrant, enter and search any place or premises if he has reason to suspect that there is therein any terrorist property; or
- (f) stop and search any person, and search the property of any person, if—
 - (i) he has reason to suspect that such person has in his actual custody any terrorist property; or
 - (ii) such person is found in any ship, aircraft, vehicle, train, place or premises in which any terrorist property is found.

(2) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to suspect that in any place there is any terrorist property, or with respect to which an offence has been committed or is about to be committed against the provisions of this Ordinance, the magistrate may, by his warrant directed to any authorized officer, empower the officer by day or by night to enter the place named in the warrant and there to search for and seize, remove and detain any terrorist property.

(3) For the purpose of enabling a ship or aircraft to be searched under subsection (1)—

- (a) the Commissioner of Customs and Excise or the Commissioner of Police may, by order in writing under his hand, detain a ship for not more than 12 hours or an aircraft for not more than 6 hours; and
- (b) the Chief Secretary for Administration may, by order in writing under his hand, detain a ship or aircraft for further periods of not more than 12 hours in the case of a ship or not more than 6 hours in the case of an aircraft.

Any order made under this subsection shall state the times from which and for which the order is effective.

(4) Any authorized officer may seize, remove and detain any thing if he has reason to suspect that such thing is terrorist property.

(5) Any authorized officer may—

- (a) break open any outer or inner door of or in any place or premises which he is empowered by this section to enter and search;
- (b) forcibly board any ship, aircraft, vehicle or train which he is empowered by this section to board and search;

- (c) 將妨礙他獲本條賦權作出的任何進入、搜查、檢查、檢取、移走或扣留的任何人或物品，以武力移走；
- (d) 扣留每一名在他獲本條賦權搜查的任何地方或處所內發現的人，直至該地方或處所被搜查完畢為止；及
- (e) 扣留每一名在他獲本條賦權搜查的任何船舶、飛機、車輛或鐵路列車上的人，並阻止任何人接近或登上該船舶、飛機、車輛或鐵路列車，直至該船舶、飛機、車輛或鐵路列車被搜查完畢為止。
- (6) 根據本條對任何人作搜查，只可由與該人性別相同的人進行。
- (7) 任何人如反對在公眾地方根據本條被搜查，則不得如此搜查該人。
- (8) 任何人故意妨礙任何人行使本條賦予他的權力，即屬犯罪。
- (9) 在本條中——

“香港海關關長”(Commissioner of Customs and Excise)包括香港海關副關長及香港海關助理關長；
“警務處處長”(Commissioner of Police)包括警務處副處長、警務處助理處長或警務處高級助理處長。

3. 被檢取的財產的扣留限期

- (1) 被檢取的財產不得扣留超過 30 日，但如在該限期屆滿前，有第 (2) 款所指的命令授權繼續扣留該財產，則屬例外。
- (2) 法庭可應律政司司長或獲授權人員向其提出的申請發出命令，授權繼續扣留被檢取的財產，但法庭須信納——
 - (a) 有合理理由懷疑該財產是恐怖分子財產；及
 - (b) 在對該財產的來源或如何得來作進一步調查期間或在考慮(不論在特區或其他地方)提起下述的法律程序期間，扣留該財產是有充分理由的——
 - (i) 針對任何人就與該財產相關的罪行而提起的法律程序；或
 - (ii) 可導致就該財產發出本條例第 5(1) 條所指的通知的法律程序，或可導致該財產遭充公或以其他方式沒收的法律程序。
- (3) 第 (2) 款所指的命令須授權在其指明的限期(該限期不得超過由該命令的日期起計的 3 個月)內繼續扣留該命令所關乎的被檢取的財產，而法庭在獲律政司司長或獲授權人員向其提出申請後，如信納第 (2)(a) 及 (b) 款所描述的事宜，可在該限期後不時發出命令授權繼續扣留該財產，但——
 - (a) 本款所指的命令所指明的扣留限期不得超過由該命令的日期起計的 3 個月；及
 - (b) 扣留限期共計不得超過由第 (2) 款所指的命令的日期起計的 2 年。
- (4) 在被檢取的財產藉第 (2) 或 (3) 款所指的命令被扣留的任何時間，如——
 - (a) 法庭應——
 - (i) 被檢取該財產的人；
 - (ii) 輸入或輸出該財產或由他人代為輸入或輸出該財產的人；或
 - (iii) 以其他方式擁有該財產的權益的人，
 - 提出的申請而信納並沒有或再沒有任何第 (2) 款所描述的扣留該財產的理由；或
 - (b) 法庭應律政司司長或獲授權人員提出的申請而信納再沒有充分理由扣留該財產，則法庭可指示將該財產發還。

- (c) remove by force any person or thing who or which obstructs any entry, search, inspection, seizure, removal or detention which he is empowered by this section to make;
- (d) detain every person found in any place or premises which he is empowered by this section to search until the same has been searched; and
- (e) detain every person on board any ship, aircraft, vehicle or train which he is empowered by this section to search, and prevent any person from approaching or boarding such ship, aircraft, vehicle or train, until it has been searched.
- (6) No person shall be searched under this section except by a person of the same sex.
- (7) No person shall be searched under this section in a public place if he objects to being so searched.
- (8) Any person who intentionally obstructs any person in the exercise of his powers under this section shall be guilty of an offence.
- (9) In this section—

“Commissioner of Customs and Excise”(香港海關關長)包括 a Deputy Commissioner of Customs and Excise and an Assistant Commissioner of Customs and Excise;
“Commissioner of Police”(警務處處長)包括 a deputy, assistant or senior assistant commissioner of police.

3. Period for which seized property may be detained

- (1) Seized property shall not be detained for a period of more than 30 days unless, before the expiration of that period, the continued detention of the property is authorized by an order under subsection (2).
- (2) A court may, upon application made to it by the Secretary for Justice or an authorized officer, by order authorize the continued detention of seized property where it is satisfied that—
 - (a) there are reasonable grounds for suspecting that the property is terrorist property; and
 - (b) the detention of the property is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of proceedings—
 - (i) against any person in relation to an offence with which the property is connected; or
 - (ii) which may result in a notice under section 5(1) of this Ordinance in respect of the property or which may result in the forfeiture or other confiscation of the property.
- (3) An order under subsection (2) shall authorize the continued detention of the seized property to which it relates for such period, not exceeding 3 months beginning with the date of the order, as is specified in the order and a court, upon application made to it by the Secretary for Justice or an authorized officer and if satisfied as to the matters referred to in subsection (2)(a) and (b), may thereafter from time to time by order authorize the further detention of the property but so that—
 - (a) no period of detention specified in an order under this subsection shall exceed 3 months beginning with the date of the order; and
 - (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).
- (4) At any time while seized property is being detained by an order under subsection (2) or (3) a court may direct its release if satisfied—
 - (a) on an application made by—
 - (i) the person from whom it was seized;
 - (ii) a person by or on whose behalf it was being imported or exported; or
 - (iii) a person who otherwise has an interest in it, that there are no, or are no longer, any such grounds for its detention as are referred to in subsection (2); or
 - (b) on an application made by the Secretary for Justice or an authorized officer, that its detention is no longer justified.

(5) 在任何被檢取的財產憑藉第(2)或(3)款所指的命令被扣留的任何時間，如有下述法律程序(不論是在特區或其他地方)提起——

- (a) 針對任何人就與該財產相關的罪行而提起的法律程序；或
 - (b) 可導致就該財產而根據本條例第5(1)條作出指示的法律程序，或可能導致該財產遭充公或以其他方式沒收的法律程序，
- 則該財產不得在該等法律程序結束前予以發還。

4. 利息

被檢取的財產如是金錢，並且是依據第3(2)或(3)條所指的命令被扣留的，除非須用作某罪行的證據，否則須存入有利息的戶口內，而且在發還該財產時，所累算的利息須計入該財產內。

5. 程序

(1) 第3(2)條所指的命令，須規定向受該命令影響的人發出通知。

(2) 除本條例第17(3)條另有規定外，《高等法院規則》(第4章、附屬法例)第115號命令第24、25、26、27、28、30、31、32及33條規則，在經所有必要的變通後，須適用於第3(2)、(3)及(4)條並就該條適用，一如其各別適用於《販毒(追討得益)條例》(第405章)第24C(2)、(3)及(4)條並就該條適用一樣。

(5) If, at any time when any seized property is being detained by virtue of an order under subsection (2) or (3), proceedings are instituted (whether in the HKSAR or elsewhere)—

- (a) against any person in relation to an offence with which the property is connected; or
- (b) which may result in a direction being given under section 5(1) of this Ordinance in respect of the property or which may result in the forfeiture or other confiscation of the property,

the property shall not be released until the proceedings have been concluded.

4. Interest

Seized property which is money and which is detained in pursuance of an order under section 3(2) or (3) shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing thereon shall be added to the property on its release.

5. Procedure

(1) An order under section 3(2) shall provide for notice to be given to persons affected by the order.

(2) Subject to section 17(3) of this Ordinance, Order 115, rules 24, 25, 26, 27, 28, 30, 31, 32 and 33, of the Rules of the High Court (Cap. 4 sub. leg.) shall, with all necessary modifications, apply to and in relation to section 3(2), (3) and (4) as it applies to and in relation to section 24C(2), (3) and (4) respectively of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

19. 規例

- (1) 局長可為使人得以被禁止作出以下作為的目的，訂立規例——
 - (a) 處理局長有合理理由懷疑是恐怖分子財產的任何財產(資金除外)；及
 - (b) 除根據局長為施行該等規例而批予的特許的授權外，處理該等財產。
- (2) 局長可為以下目的，訂立規例——
 - (a) 便利取得證據及資料，以確保本條例獲遵從或偵查規避本條例的情況；
 - (b) 便利取得與犯本條例所訂的罪行有關的證據；及
 - (c) 使懷疑是恐怖分子財產的財產，能在對其來源或如何得來作進一步的調查期間或在考慮(不論在特區或其他地方)提起下述的法律程序期間予以檢取和扣留——
 - (i) 針對任何人就與該財產相關的罪行而提起的法律程序；或
 - (ii) 可導致該財產在第6(1)條所指的通知內被指明的法律程序，或可導致該財產遭充公或以其他方式沒收的法律程序。
- (3) 局長可為授權公職人員執行根據本條訂立的規例下的職能或行使該等規例下的權力的目的，訂立規例。
- (4) 局長可為基於規例所指明的理由，向由於任何在根據本條訂立的規例下就任何財產作出的作為或不作為而蒙受損失的人作出賠償的目的，訂立規例。
- (5) 根據本條訂立的規例，可就為第(1)、(2)或(4)款所述的目的而向裁判官或法庭提出申請，以及就由裁判官或法庭為該等目的作出命令，作出規定。
- (6) 根據本條訂立的規例——
 - (a) 就違反該等規例(包括違反根據該等規例所作出的任何命令)訂明罪行；及
 - (b) 規定就任何該等罪行——
 - (i) (如經循公訴程序定罪)處以罰款及監禁不超過7年；
 - (ii) (如經循簡易程序定罪)處以不超過第6級罰款及監禁不超過1年。
- (7) 根據本條訂立的規例須經立法會批准。

19. Regulations

- (1) The Secretary may make regulations for the purposes of enabling persons to be prohibited from dealing with any property (other than funds)—
 - (a) that the Secretary has reasonable grounds to suspect is terrorist property; and
 - (b) except under the authority of a licence granted by the Secretary for the purposes of the regulations.
- (2) The Secretary may make regulations for the purposes of—
 - (a) facilitating the obtaining of evidence and information for the purpose of securing compliance with or detecting evasion of this Ordinance;
 - (b) facilitating the obtaining of evidence in relation to the commission of an offence under this Ordinance; and
 - (c) enabling property suspected of being terrorist property to be seized and detained while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of proceedings—
 - (i) against any person in relation to an offence with which the property is connected; or
 - (ii) which may result in the property being specified in a notice under section 6(1) or which may result in the forfeiture or other confiscation of the property.
- (3) The Secretary may make regulations for the purposes of authorizing public officers to perform functions or exercise powers under regulations made under this section.
- (4) The Secretary may make regulations for the purposes of providing compensation to be paid, on grounds specified in the regulations, to a person who has suffered loss in consequence of any act done or omission made under regulations made under this section in respect of any property.
- (5) Regulations made under this section may provide for applications to be made to, and orders to be made by, a magistrate or court for any purposes mentioned in subsection (1), (2) or (4).
- (6) Regulations made under this section may—
 - (a) prescribe offences in respect of contraventions of the regulations (including contravention of any orders made under the regulations); and
 - (b) provide for the imposition in respect of any such offence of—
 - (i) on conviction on indictment, a fine and imprisonment for not more than 7 years;
 - (ii) on summary conviction, a fine at not more than level 6 and imprisonment for not more than 1 year.
- (7) Regulations made under this section shall be subject to the approval of the Legislative Council.