

26 November 2002

Ms Doris Chan
Clerk to Subcommittee
Subcommittee on United Nations Sanctions
(Afghanistan)(Amendment) Regulation 2002 and
United Nations Sanctions (Angola) (Suspension of
Operation) Regulation 2002
Legislative Council

Dear Ms Chan,

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

Meeting on 10 December 2002

I refer to your letter of 4 November 2002. As requested, I set out below our responses to the points raised by the Members at the first meeting of the Subcommittee.

(a) Since the enactment of the United Nations (UN) Sanctions Ordinance in July 1997, all of the UN Security Council Resolutions (UNSCR) we were instructed by the Central People's Government to implement have been against places, except for UNSCR 1373. As such, the approach adopted by the Security Council under UNSCR 1373, i.e. imposing sanctions against persons instead of places, is an exception rather than a

general trend as far as the imposition of sanctions by the Security Council is concerned. As in the case of UNSCR 1373, we will implement such sanctions through other legislative and/or administrative measures as appropriate. It follows that there is no pressing reason to amend the UN Sanctions Ordinance to cater for such exceptions in the future.

We would also like to take this opportunity to reiterate our view that the target of UNSCR 1390 is Afghanistan. Therefore, it is appropriate to implement the Resolution in the HKSAR through the UN Sanctions (Afghanistan)(Amendment) Regulation 2002 (the Afghanistan Regulation) in accordance with the UN Sanctions Ordinance.

(b) & (c) Admittedly, there is overlap between the United Nations (Anti-Terrorism Measures) Ordinance (the Anti-Terrorism Ordinance) and the Afghanistan Regulation, in that both contain provisions prohibiting the supply of funds and arms to the persons and entities designated by the Committee established pursuant to UNSCR 1267 (the Committee). Such overlap is inevitable as it arises from the overlap between UNSCR 1373 and 1390 themselves. That said, the target coverage of the Anti-Terrorism Ordinance is wider than that of the Afghanistan Regulation, for it includes, but is not limited to, the persons and entities designated by the Committee.

While we believe that it is appropriate to implement UNSCR 1373 and UNSCR 1390 separately under the Anti-Terrorism Ordinance and the Afghanistan Regulation, we accept that repealing the provisions on arms embargoes and prohibition against supply of funds under the Afghanistan Regulation is legally viable and has the merit of removing the overlap between the two laws. In this regard, we are prepared to introduce an amendment regulation under the UN Sanctions Ordinance to repeal these provisions in the Afghanistan Regulation. Sections 7, 8 and 9 of the Anti-Terrorism Ordinance are, in our view, sufficient in implementing these sanctions as required under both UNSCR 1373 and UNSCR 1390.

On the other hand, the Anti-Terrorism Ordinance contains no provision under which we can implement the sanction under UNSCR 1390 which prohibits the provision of technical advice, assistance and training related to military activities to the persons and entities designated by the Committee. Nor does the Anti-Terrorism Ordinance have provisions to give effect to the sanction on travel restriction against the targeted persons under the Resolution. As such, the relevant provisions will need to be retained in the Afghanistan Regulation to give effect to these sanctions in UNSCR 1390.

(d) Under the Immigration Ordinance, persons who do not enjoy the right of abode or right to land in Hong Kong, unless otherwise exempted, require permission to land here as visitors, regardless of where they come from and regardless of any UN mandated restrictions. Visitors from Angola are, as a matter of immigration policy, not exempted from the visa requirement to enter the HKSAR. Upon receipt of such visa applications the Director can, in exercising the discretion conferred on him by the Immigration Ordinance, determinate whether to grant visas in accordance with current immigration policy governing the entry of visitors.

Although section 4D of the UN Sanctions Ordinance (Angola) Regulation was not suspended for the short period covered by UNSCR 1412, any visa application received during that period could have been considered by the Director under current immigration policy. We agree that he would not have been able to grant a visa until the UN Sanctions (Angola) Regulation (Suspension of Operation) Regulation 2002 (the Suspension Regulation) came into force on 18 October 2002, but the processing of any application could nevertheless have commenced. Incidentally, no application was received during the period between the adoption of UNSCR 1412 and the enactment of the Suspension Regulation.

In this connection, we would like to inform the Subcommittee that the UN Security Council has recently adopted UNSCR 1439, deciding to terminate the existing sanctions on travel restriction against the members of the National Union for the Total Independence of Angola (UNITA), following the expiration of the suspension of these sanctions under UNSCR 1432. This

confirms our earlier assessment that the suspension of travel restrictions was likely to be on-going. By not specifying the expiry date of the suspension in the Regulation, we are now able to implement the latest UNSCR with no delay.

Yours sincerely,

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