

**The United Nations Sanctions
(Afghanistan) (Arms Embargoes) Regulation**

At the meeting on 30 November 2001, the Legislative Council Panels on Security, Administration of Justice and Legal Services and Financial Affairs requested a written response on the redress available to an innocent person charged with the provision of goods to an entity without knowledge that the entity was associated with Usama bin Laden and whether innocent persons could recover their funds frozen pursuant to the United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation. The Administration's response is set out in the following paragraphs.

2. Sections 4 and 5 of the Regulation create offences of supplying, delivering or exporting prohibited goods to Taliban territory. It is a defence to these offences for an accused person to show that he did not know and had no reason to suppose that the goods were prohibited goods or that the destination was Taliban territory.

3. As to whether innocent persons can recover their frozen funds, it should be pointed out that the Regulation does not "freeze" assets so that the persons concerned cannot use them. Rather they make it an offence to make funds available in a manner described in the Regulation. The practical effect is that a bank will not release or transfer funds from a particular account if it believes that in so doing an offence against section 8 of the Regulation will be committed.

4. Section 8 of the Regulation prohibits making funds or financial resources available to or for the benefit of Usama bin Laden or his associates.

If the funds are not to be used for such purpose, and provided that the funds belong to an innocent third party, there is no restriction on their use. The section also prohibits the payment of funds or financial resources that are derived from property owned or controlled by Usama bin Laden or his associates. Payment of these funds cannot be made regardless of the purpose.

5. A customer whose account is affected and who does not believe that the release or transfer of funds from his account will contravene section 8 can bring proceedings against the Bank in Hong Kong. The Court will decide who is right.

6. Payment can also be made under licence from the CE with the approval of the instructing authority, pursuant to section 18(1)(a) of the Regulation.

7. Members may wish to know that the United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation (the Regulation) already expired on 18 January 2002, in accordance with the United Nations Security Council Resolution (UNSCR) 1333. The Security Council passed a resolution on extending part of the sanctions imposed by UNSCR 1333, including the freezing of assets of Usama bin Laden and his associates. We shall implement the new resolution in the HKSAR upon receiving instruction from the Office of the Ministry of Foreign Affairs of the People's Republic of China.