

立法會

Legislative Council

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Paper for the LegCo Panels on Security and Administration of Justice and Legal Services

United Nations Sanctions (Afghanistan) Regulation (L.N. 229 of 2000)

United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation (L.N. 211 of 2001)

At the joint meeting of the LegCo Panel on Security and Panel on Administration of Justice and Legal Services on 30 November 2001, Members requested the Legal Services Division to prepare a report on the two Regulations made by the Chief Executive to implement United Nations Security Council Resolutions ("*UNSCR*") 1267 and 1333, i.e. the United Nations Sanctions (Afghanistan) Regulation (L.N. 229 of 2000) and the United Nations Sanctions (Afghanistan)(Arms Embargoes) Regulation (L.N. 211 of 2001).

United Nations Sanctions Ordinance (Cap. 537)

2. The two Regulations were made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) ("*the Ordinance*") on the instruction of the Ministry of Foreign Affairs of the People's Republic of China ("*the Authority*") and after consultation with the Executive Council. Section 3 of the Ordinance provides that the Chief Executive shall make regulations to give effect to an instruction given to him by the Authority to implement sanctions specified in the instruction against a place outside the People's Republic of China.

3. The instruction arises from Chapter 7 of the Charter of the United Nations where the Security Council of the United Nations ("*UNSC*") has decided on a measure to be employed to give effect to any of its decisions and has called on all member states to apply the measure. Sanctions include complete or

partial economic and trade embargoes, arms embargoes and other mandatory measures decided by UNSC.

4. Section 3(5) of the Ordinance provides that sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under the Ordinance. The two Regulations are therefore not subject to the scrutiny by the Legislative Council.

United Nations Sanctions (Afghanistan) Regulation (L.N. 229 of 2000) - implementing UNSCR 1267

5. The United Nations Sanctions (Afghanistan) Regulation (L.N. 229 of 2000) ("*the First Regulation*") was published in the Gazette on 23 June 2000. It implements UNSCR 1267 by :

- (a) prohibiting an aircraft from taking off from or landing in Hong Kong if the aircraft is owned, leased or operated by or on behalf of the Taliban, as designated by the Committee of the UNSC established pursuant to the Resolution ("*the Committee*");
- (b) freezing assets of the Taliban or any entity owned or controlled directly or indirectly by the Taliban and prohibiting funds or other financial resources available to them.

6. The First Regulation shall not apply to any flight that has been approved or any action that has been authorized in advance by the Committee on the ground of humanitarian need. Also, it shall not apply where permission in writing of the Chief Executive has been granted in accordance with a resolution of UNSC.

7. For the purpose of securing compliance with or detecting evasion of the First Regulation, provisions have been made for :

- (a) obtaining evidence and information;
- (b) making search pursuant to a search warrant granted by a magistrate or judge; and
- (c) disclosing information.

8. **Annex A** sets out the offences created under the First Regulation and the penalties prescribed therefor.

9. The provision on freezing of fund and financial resources applies to any person within Hong Kong and any person elsewhere who is :

- (a) both a Hong Kong permanent resident and a Chinese national; or
- (b) a body incorporated or constituted under the law of Hong Kong.

10. Where a body corporate is guilty of an offence and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

11. Summary proceedings for an offence under the First Regulation, being an offence alleged to have been committed outside Hong Kong, may be instituted at any time not later than 12 months from the date on which the person charged first enters Hong Kong after committing the offence. No proceedings shall be instituted in Hong Kong except by or with the consent of the Secretary for Justice.

United Nations Sanctions (Afghanistan)(Arms Embargoes) Regulation (L.N. 211 of 2001) - implementing UNSCR 1333

12. The United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation (L.N. 211 of 2001) ("*the Second Regulation*") was published in the Gazette on 12 October 2001. It implements UNSCR 1333 by :

- (a) imposing restrictions on the supply, delivery, exportation and carriage of arms, related material and acetic anhydride ("prohibited goods") to the territory of Afghanistan under Taliban control;
- (b) imposing restrictions on the provision of technical advice, assistance and training related to the military activities of the armed personnel of the Taliban;

- (c) imposing restrictions on flights taking off from, landing in or flying over Hong Kong if they are destined for or have taken off from the territory of Afghanistan under Taliban control;
 - (d) freezing assets of Usama bin Laden and any person connected with him and prohibiting funds or other financial resources available to them;
 - (e) prohibiting the establishment and maintenance of offices or other premises under the name of Taliban or Islamic Emirate of Afghanistan or Ariana Afghan Airlines.
13. The Second Regulation shall not apply to :
- (a) non-lethal military equipment intended solely for humanitarian or protective use that has been approved in advance under UNSCR 1333 by the Committee;
 - (b) protective clothing intended to be worn only by a member of the personnel of the United Nations, a representative of the media or a humanitarian worker;
 - (c) provision of technical advice assistance or training related to (a);
 - (d) any flight that has been approved in advance under UNSCR 1333 by the Committee on the grounds of humanitarian need or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan, or is likely to promote Taliban compliance with UNSCR 1267 and 1333;
 - (e) any humanitarian flights operated by, or on behalf of, organizations and governmental relief agencies as approved under UNSCR 1333 by the Committee.
14. The restrictions concerning prohibited goods, technical advice and freezing of funds shall not apply to a person acting under the authority of a licence granted by the Chief Executive. Such licence shall be granted in writing with the approval of the Authority, given generally or in a particular case.

It may be subject to conditions and may also be limited to expire on a specified date unless renewed.

15. Other than the restrictions on carriage of prohibited goods and the prohibition of flights, the remaining restrictions in the Second Regulation apply to any person within Hong Kong and any person elsewhere who is :

- (a) both a Hong Kong permanent resident and a Chinese national; or
- (b) a body incorporated or constituted under the law of Hong Kong.

16. Provisions similar to those referred in paragraph 7 above have been made for the purpose of securing compliance with or detecting evasion of the Second Regulation. In addition, powers are given to demand evidence of destination of goods, to search a person about to leave Hong Kong and to search suspected ships, aircraft and vehicles.

17. **Annex B** sets out the offences created under the Second Regulation and the penalties prescribed therefor. The principles in paragraphs 10 and 11 above apply to the Second Regulation as well.

18. The Second Regulation shall expire on 18 January 2002. This date ties in with the end date of the twelve-month period under UNSCR 1333 when UNSC will decide whether to extend the measures imposed for a further period with the same conditions.

Encl

Prepared by

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Legislative Council Secretariat
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United Nations Sanctions (Afghanistan) Regulation (L.N. 229 of 2000)

Offence	Penalty	
	conviction on indictment	summary conviction
<ul style="list-style-type: none"> • furnishing false information or false explanation intentionally • destroying, mutilating, defacing, secreting or removing document • contravening prohibition of flights 	unlimited fine imprisonment for 2 years	fine at level 6 [#] imprisonment for 6 months
<ul style="list-style-type: none"> • contravening freezing of fund and financial resources 	unlimited fine imprisonment for 7 years	fine at level 6 [#] imprisonment for 6 months
<ul style="list-style-type: none"> • making or recklessly making false statement, furnishing or recklessly furnishing false document or information for the purpose of obtaining permission • failure to comply with condition attaching to permission 	unlimited fine imprisonment for 2 years	fine at level 6 [#]
<ul style="list-style-type: none"> • refusing or failing to comply with request without reasonable excuse • intentionally obstructing authorized person in the exercise of his power 		fine at level 6 [#] imprisonment for 6 months

[#] fine at level 6 means \$100,000

United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation (L.N. 211 of 2001)

Offence	Penalty	
	conviction on indictment	summary conviction
<ul style="list-style-type: none"> • contravening the restriction on supply, delivery, exportation and carriage of prohibited goods • contravening the restriction on provision of technical advice, assistance and training 	unlimited fine imprisonment for 7 years	fine at level 6 [#] imprisonment for 6 months
<ul style="list-style-type: none"> • contravening prohibition of flights • intentionally or recklessly furnishing false information, explanation or document • destroying, mutilating, defacing, secreting or removing document 	unlimited fine imprisonment for 2 years	fine at level 6 [#] imprisonment for 6 months
<ul style="list-style-type: none"> • contravening prohibition of offices and failure to comply with closure order 		fine at level 5 [^]
<ul style="list-style-type: none"> • exporter or shipper of prohibited goods failing to furnish proof • refusal to make declaration, failure to produce goods he has with him or refusal to allow himself to be searched 		fine at level 6 [#]
<ul style="list-style-type: none"> • making or recklessly making false statement, furnishing or recklessly furnishing false document or information for the purpose of obtaining a licence • failure to comply with conditions attaching to licence • making or recklessly making false declaration 	unlimited fine imprisonment for 2 years	fine at level 6 [#]
<ul style="list-style-type: none"> • during investigation of suspected ship, aircraft or vehicle, disobeying direction, refusing or failing to comply with request without reasonable excuse, or intentionally obstructing authorized officer in the exercise of powers • refusing or failing to comply with request without reasonable excuse • intentionally obstructing authorized person in the exercise of his power 		fine at level 6 [#] imprisonment for 6 months

[^] fine at level 5 means \$50,000

[#] fine at level 6 means \$100,000