

立法會
Legislative Council

LC Paper No. LS7/02-03

**Paper for the House Committee Meeting
on 25 October 2002**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 October 2002**

Date of Tabling in LegCo : 23 October 2002

Amendment to be made by : 20 November 2002 (or 11 December 2002
if extended by resolution)

PART I AMENDMENT OF SUBSIDIARY LEGISLATION

Road Traffic Ordinance (Cap. 374)
Road Traffic (Construction and Maintenance of Vehicles) (Amendment)
(No. 2) Regulation 2002 (L.N. 147)
Road Traffic (Safety Equipment) (Amendment) Regulation 2002 (L.N. 148)

2. The Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 2002 requires public light buses ("PLBs") registered after a date to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette ("appointed date"):

- (a) to widen the width of its seats and to provide for a back rest, which must be equipped with a head restraint if the back rest exceeds 800 millimetres in height;
- (b) for seats fitted with retractable belts, to provide for padding for places which are likely to be struck by the head of a passenger wearing the retractable belt in case of an accident; and
- (c) to comply with specifications and standards for seats and their anchorages.

3. The Road Traffic (Safety Equipment) (Amendment) Regulation 2002:

- (a) requires PLBs registered after an appointed date to have all rear seats fitted with retractable belts and anchorage points;

- (b) requires a passenger in the rear seat of a PLB to wear the seat belt, if a seat belt is fitted to the seat;
- (c) removes the requirement on a PLB driver to ensure that the passenger in the front seat is securely fastened with a seat belt. The passenger himself will become solely liable for his not being securely fastened. This is in line with the current arrangement for taxi driver; and
- (d) updates the overseas standards in Schedule 2 to reflect the current international trend and technological development.

4. Members may refer to the LegCo Brief issued by the Environment, Transport and Works Bureau in October 2002 (File Ref: ETWB(T)CR 6/3231/00 Pt. 3) for background information. According to the LegCo Brief, the PLB trade and the vehicle suppliers have been consulted. They indicated general support and requested for sufficient lead time for the design and installation of the proposed safety facilities.

5. At the meeting of the Panel on Transport on 19 January 2001, Members did not raise any specific comment on the proposals on high back seats. A Member welcomed the requirement of rear seat belts in PLBs and urged for early implementation.

6. The Administration expects to bring both Amendment Regulations into operation on or after 1 August 2004. It will also move a resolution to introduce an amendment to the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) consequential to the coming into effect of the provision in paragraph 3(c).

7. No difficulties in relation to the legal and drafting aspects of the Amendment Regulations have been identified.

**Employees Retraining Ordinance (Cap. 423)
Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2002
(L.N. 149)**

8. Schedule 2 to the Employees Retraining Ordinance (Cap. 423) ("the Ordinance") sets out the training bodies capable of providing or conducting retraining courses or supplementary retraining programme for the purposes of the Ordinance. This Notice is made by the Employees Retraining Board under section 31(2) of the Ordinance to amend item 25 of Schedule 2 to reflect the change of name of "Hong Kong Federation of Women" to "Hong Kong Federation of Women Limited".

PART II COMMENCEMENT NOTICE

Airport Authority Ordinance (Cap. 483)

Airport Authority (Permitted Airport-Related Activities) Order (L.N. 127 of 2002) (Commencement) Notice 2002 (L.N. 150)

9. The Airport Authority (Permitted Airport-related Activities) Order (L.N. 127 of 2002) ("the Order"), gazetted on 9 July 2002, was made under section 5(3) of the Airport Authority Ordinance (Cap. 483) to permit the Airport Authority ("AA") to engage in certain airport-related activities beyond its geographical limitation, subject to the prescribed conditions.

10. The scope of the permitted airport-related activities and the conditions imposed on AA when engaging in these activities have been discussed in detail by Members. Members may refer to the LegCo Brief (File Ref.: EDB CR 2/935/95(02)) issued by the Economic Development and Labour Bureau dated 9 July 2002 and Legal Service Division report (LC Paper No. LS130/01-02) on the Order dated 30 September 2002 for further information.

11. Members may recall that a resolution was passed on 16 October 2002 to amend the Order to better reflect the policy intent.

12. By this Notice, the Secretary for Economic Development and Labour appoints 18 October 2002 as the day on which the Order comes into operation.

PART III LEGAL NOTICE NOT REQUIRED TO BE TABLED

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002 (L.N. 151)

13. The United Nations Sanctions Ordinance (Cap. 537) ("the Ordinance") requires the Chief Executive to make regulations to give effect to an instruction of the Ministry of Foreign Affairs ("MFA") of the People's Republic of China ("PRC") to implement a United Nations Security Council Resolution ("UNSCR") to impose sanctions against a place outside PRC. This Regulation is made under section 3 of the Ordinance by the Chief Executive on the instruction of the MFA and after consultation with the Executive Council. As the application of sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) is specifically excluded, the Regulation is not required to be laid before the Legislative Council and is not subject to amendment by the Council.

14. The Regulation has come into operation upon its gazettal on 18 October 2002.

15. On 28 August 1997, the Security Council of the United Nations

("UNSC") determined that the situation in Angola constituted a threat to international peace and security in the region and passed UNSCR 1127 (1997) to impose certain measures on the National Union for the Total Independence of Angola ("UNITA").

16. Paragraphs 4(a) and (b) of the UNSCR 1127 (1997) provide that all States shall take the necessary measures ("the Measures") to :-

- (a) prevent the entry into or transit through their territories of all senior officials of UNITA and of adult members of their immediate families; and
- (b) suspend or cancel all travel documents, visas or residence permits issued to senior UNITA officials and adult members of their immediate families.

17. To give effect to the UNSCR 1127 (1997), sections 4D and 4E of the United Nations Sanctions (Angola) Regulation (Cap. 537 sub. leg.) ("the principal Regulation") were made by the Chief Executive on the instruction of the MFA after consultation with the Executive Council to:

- (a) 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 HKSAR (section 4D); and
- (b) cancel any travel document issued to such a person by the Director of Immigration (section 4E).

18. On 4 April 2002, the Government of Angola and UNITA signed the Memorandum of Understanding Addendum to the Lusaka Protocol for the Cessation of Hostilities and the Resolution of the Outstanding Military Issues under the Lusaka Protocol. To facilitate the travel by UNITA members for the peace process and national reconciliation to advance, including to enable UNITA's reorganization, with the goal of rapid reintegration into national life and fulfilment of all peace accords, UNSCR 1412 (2002) was passed on 17 May 2002 to suspend the Measures for 90 days from 17 May 2002 to 14 August 2002. Subsequently, UNSCR 1432 (2002) was passed on 15 August 2002 to suspend the Measures for an additional period of 90 days from 15 August 2002 to 13 November 2002.

19. The object of the Regulation is to suspend the operation of sections 4D and 4E of the principal Regulation.

20. We have requested the Administration to clarify the following issues:

- (a) the measures adopted by the Administration to implement UNSCR 1412 (2002) for the period from 17 May 2002 to 14 August 2002; and
- (b) the absence of an expiry date in the Regulation.

21. The Administration has the following response:

- (a) UNSCR 1412 (2002)

The Administration received a relevant instruction from the MFA to implement the resolution in June 2002 and found it impracticable to introduce a regulation to give effect to the resolution for ExCo's consideration before the ExCo summer recess. Therefore, the Administration considered it more appropriate and in the greater interest of Hong Kong to give effect to the resolution through administrative means under its existing immigration control regime. It was possible for the Director of Immigration to carry out the resolution by accepting applications for entry visas from the senior officials of UNITA and their immediate family members during the effective period of the resolution.

The Administration advised that the Immigration Department has not received any applications from the senior officials of UNITA and their immediate family during the period from 17 May 2002 to 15 August 2002.

- (b) UNSCR 1432 (2002)

The Administration's view is that it could be predicted with greater probability that the suspension of the Measures was likely to be ongoing. Therefore, the Administration has not provided for an expiry date for the Regulation. The Administration intends to repeal the Regulation if the Measures are not further suspended by the UNSC.

If a new UNSCR is passed after expiry of the resolution to further extend the suspension of the Measures for another designated period of time and the MFA so instructs, the Administration plans to introduce another regulation under the Ordinance to "amend" the Regulation and specify an expiry date therein.

22. There are reservations on the above-mentioned options proposed by the Administration. The Administration's response raises the issue of whether the Chief Executive has complied with the requirement under section 3 of the Ordinance to make regulations to give effect to an instruction given by MFA to implement the UNSCRs is question. It is therefore recommended that a Subcommittee be formed to study the Regulation.

23. Copies of our letters to the Administration (Annex B and D) and the Administration's response (Annex A and C) are enclosed in this report.

Encl

Prepared by

LAI Shun-wo, Monna
Assistant Legal Adviser
Legislative Council Secretariat
23 October 2002

Annex A

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23 October 2002

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

Dear Ms Lai,

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

Thank you for your letter of 21 October 2002 inviting us to provide our views on your observations

First, may I point out that there is no disagreement between us that, under the United Nations Security Council Resolution (UNSCR) 1432, the travel restrictions, namely, the prohibition of entry or transit and the cancellation of travel document of senior officials of UNITA and adult members or their immediate families, previously imposed under sections 4D and 4E of the United Nations Sanctions (Angola) Regulation (Cap. 537 sub. leg) should be suspended until 13 November if the Security Council decided not to extend the suspension further. Our view is that we would only be breaching the instructing authority's instruction with regard to UNSCR 1432 if we took no steps to repeal the suspension Regulation when the suspension is not extended. As pointed out in my previous letter, prompt steps would be taken to ensure that any such decision (not to extend the suspension) would be given effect by legislation. Indeed we have already started preparations to enact another regulation under section 3 of the UNS Ordinance to repeal the existing Regulation in case the suspension is not extended. By doing so, we would be carrying out the instructing authority's original instruction with regard to UNSCR 1432 promptly and effectively.

In the event that the Security Council passes a resolution to extend the suspension indefinitely and the instructing authority instructs us to give effect to such a resolution, the existing Regulation would allow us to implement the instructing authority's instructions instantaneously without going through another legislative process.

If a UNSCR was passed after the current 90-day expiry period to extend the suspension for another designated period of time and the instructing authority so instructed, we would then introduce a regulation under the UNS

Ordinance to amend the Regulation by specifying the new expiry date in order to remove all possible doubts. Meanwhile, the Regulation as it stands would allow us to implement the instructing authority's instructions without any break or delay. This is the merit in the approach we have adopted as it would ensure that the instructing authority's instruction is carried out without unnecessary delay on the one hand, and that steps are taken to address any possible concerns about the date of expiry of the suspension on the other.

As for the implementation of UNSCR 1412, you may wish to note that the Administration had not received the instruction from the Instructing Authority until June this year. Since the last meeting of ExCo before its summer recess was scheduled for 9 July 2002, it was practically impossible for us to give effect to such an instruction by introducing a regulation under the United Nations Sanctions (UNS) Ordinance for ExCo's consideration within one month's time. On the other hand, UNSCR 1412 would have expired if we tabled a draft regulation before ExCo when it resumed. Therefore, instead of not implementing UNSCR 1412 at all, we considered it more appropriate and in the greater interest of Hong Kong to give effect to the Resolution in the HKSAR through administrative means under our existing visa control regime. I have explained in my previous letter how this was done, and you may wish to know that the Director of Immigration had been notified of the suspension and had agreed to effect the suspension as prescribed by UNSCR 1412 under the existing visa control regime.

I hope the above helps to further clarify the Administration's considerations and intentions. Please let me know if we can be of further assistance.

Yours sincerely,

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

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Secretary for Commerce, Industry
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By Fax (2530 5966) and By Post

21 October 2002

Dear Miss CHAN

**United Nations Sanctions (Angola) (Suspension
of Operation) Regulation 2002 ("the Regulation")**

Thank you for your letter dated 21 October 2002.

To give effect to the United Nations Security Council Resolution ("UNSCR") 1127 (1997), sections 4D and 4E of the United Nations Sanctions (Angola) Regulation (Cap. 537 sub. leg.) were made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) ("the Ordinance") by the Chief Executive on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive council to:

- (a) prohibit the entry or transit of such person designated as senior official of UNITA or an adult member of his immediate family through the HKSAR (section 4D); and
- (b) cancel any travel document issued to such person by the Director of Immigration (section 4E).

Subsequently UNSCR 1412 (2002) was passed to suspend the prohibition and cancellation from 17 May 2002 to 14 August 2002. UNSCR 1432 (2002) was passed to further suspend the prohibition and cancellation from 15 August 2002 to 13 November 2002.

It would therefore appear that -

- (a) the prohibition and cancellation should have continued to take effect in Hong Kong unless any suspension by UNSCR is enforced by local legislation; and
- (b) the prohibition and cancellation should be suspended only until 13 November 2002.

Subject to the instruction given by the instructing authority to the Chief Executive under section 3 of the Ordinance, the measures adopted by the Administration as mentioned in paragraphs 2(a) and (b) of your letter are apparently inconsistent with UNSCR 1127 (1997), 1412 (2002) and 1432 (2002) and the Ordinance, which requires the Chief Executive to make regulations to give effect to the UNSCR upon instruction given by the instructing authority. Please give the Administration's views on the apparent inconsistencies.

The Regulation will be considered in the House Committee meeting to be held on 25 October 2002. It will be appreciated if your reply in both languages could reach us by close of play on 22 October 2002.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

c.c. LA

Annex C

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21 October 2002

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Dear Ms Lai,

**United Nations Sanctions (Angola) (Suspension
of Operation) Regulation 2002 ('the Regulation)**

Thank you for your letter of 18 October 2002.

With regard to the two points on which clarification were sought, please find our response as follows :

- (a) We are conscious of the fact that Resolution 1432 requires that Members states suspend the travel restrictions imposed against senior officials of the National Union for the Total Independence of Angola (UNITA) and the adult members of their immediate families for 90 days from 15 August 2002. We did not provide for an expiry date for the suspension regulation mainly because the legal advice we received was that it could be predicted with greater probability that the suspension was likely to be ongoing in view of the following facts (as mentioned in Resolution 1432)
-
- (i) UNITA had entered into an Memorandum of Understanding for the Cessation of Hostilities and the Resolution of the Outstanding Military Issues with the Government of Angola for ceasing fire;
- (ii) UNITA was regarded by the UN Security Council as actively participating in the democratic political process of Angola, in particular the demobilization and quartering of UNITA soldiers as well as the disbanding of UNITA's military wing;

- (iii) The travel ease of UNITA members was regarded by the UN Security Council as necessary "for the peace process and national reconciliation to advance"; and
- (iv) The said travel restrictions were first suspended for an initial period of 90 days from 17 May 2002 under Resolution 1412. The suspension were extended for an additional period of 90 days under Resolution 1432 and the UN Security Council may review the suspension measure prior to the end of the existing suspension period.

Besides, by not specifying the expiry date in the suspension Regulation, the Administration would be able to implement immediately any UN Resolution that provides for another extension of the suspension period rather than go through another legislative exercise. This ensures that there would be no unnecessary delay in suspending the operation of the relevant statutory provisions which impose the travel restrictions. If the UN Security Council decided not to extend the suspension (a less likely scenario in our view), the Administration would take prompt steps to repeal the suspension Regulation and in the meantime, implement the travel restrictions under our existing immigration control regime.

- (b) After we received the relevant instructions from the CPG to implement Resolution 1412 in June, we found it impracticable to enact a regulation to implement Resolution 1412 before the summer recess of ExCo. Taking account of the short effective period of the suspension provided under Resolution 1412, i.e. 90 days, we concluded that a better option would be to implement the Resolution under our existing immigration control regime.

Under our existing immigration control regime, visitors from Angola are required to apply to the Director of Immigration for entry visas when they wish to enter HKSAR regardless of whether there are any UN-mandated restrictions on their travel or entry. Hence it was possible for the Director of Immigration to carry out the provisions of Resolution 1412 by accepting applications for entry visas from the senior officials of UNITA and their immediate family members during the effective period of the Resolution. Upon receiving such applications, the Director of Immigration will, as usual, exercise his judgement as to whether the applicants concerned should be granted a visa to enter Hong Kong. This is entirely in line with the provisions of the Resolution 1412. In this connection, you may wish to note that the Immigration Department has not received any applications from the senior officials of UNITA and their immediate family during the period from 17 May to 15 August 2002.

I hope the above is helpful. Please do not hesitate to contact me if you have further enquiries.

Yours sincerely,

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

LS/S/3/02-03

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18 October 2002

Dear Miss CHAN

**United Nations Sanctions (Angola) (Suspension
of Operation) Regulation 2002 ("the Regulation")**

I understand from our telephone conversation today and the 3 United Nations resolutions provided by you that: -

- (a) resolution 1412 (2002) was passed by the Security Council of the United Nations on 17 May 2002 to suspend the measures imposed by paragraphs 4(a) and (b) of resolution 1127 (1997) ("the Measures") for a period of 90 days from 17 May 2002 to 14 August 2002;
- (b) resolution 1432 (2002) was passed on 15 August 2002 to further suspend the Measures for another 90 days from 15 August 2002 to 13 November 2002; and
- (c) the Regulation is made to give effect to resolution 1432 (2002).

I shall therefore be grateful if you could clarify the following issues: -

- (a) should not the Regulation provide for its expiry on the same date as specified in resolution 1432 (2002) i.e. on 13 November 2002? and
- (b) the measures, if any, adopted by the Administration to implement resolution 1412 (2002).

The Regulation will be considered in the House Committee meeting to be held on 25 October 2002. It is appreciated that your reply in both languages could reach us by noon, 21 October 2002.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

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