

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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**Subcommittee to Examine
the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions**

**Minutes of ninth meeting
held on Tuesday, 18 December 2007, at 4:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon LAU Kong-wah, JP
- Public officers attending** : Mr Jonathan MCKINLEY
Acting Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)
- Miss Anna CHOR
Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)
- Ms Amelia LUK
Acting Law Officer (International Law)
- Mr Peter WONG
Deputy Principal Government Counsel
(Treaties and Law)
- Clerk in attendance** : Miss Polly YEUNG
Chief Council Secretary (1)5
- Staff in attendance** : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms YUE Tin-po
Senior Council Secretary (1)5

Ms Guy YIP
Council Secretary (1)1

Action

I The Administration's response to the Subcommittee's report submitted to the House Committee

- (LC Paper No. CB(1)379/07-08(01) -- Administration's response to issues raised at the meeting on 30 October 2007
- LC Paper No. CB(1)144/07-08(01) -- Administration's response to submission from the Hong Kong Bar Association
- LC Paper No. CB(1)2323/06-07(01) -- The Administration's paper "Comments on the report to the House Committee prepared by the Subcommittee"
- LC Paper No. CB(1)108/07-08(01) -- Submission from the Hong Kong Bar Association (English version only)
- LC Paper No. LS9/07-08 -- Observations on the Administration's paper "Comments on the report to the House Committee prepared by the Subcommittee" prepared by the Legal Services Division of the Legislative Council Secretariat
- LC Paper No. CB(1)1587/06-07 -- Report of the Subcommittee to the House Committee meeting on 18 May 2007 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1586/06-07 -- Summary of key issues raised in the report of the Subcommittee prepared by the Legislative Council Secretariat

LC Paper No. CB(1)108/07-08(02) -- List of Regulations made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (since July 2004 and up to 8 October 2007))

The Subcommittee deliberated (Index of proceedings attached at Appendix).

The Administration's response to issues raised at the meeting on 30 October 2007

2. The Chairman remarked that in principle, the Subcommittee would not dispute the need for Hong Kong to implement UN sanctions as part of the Central People's Government (CPG)'s international obligations. She pointed out that the Subcommittee's main concern was the current form or legislative approach adopted by the Hong Kong Special Administrative Region (HKSAR) Government to give effect to the instructions issued by the Ministry of Foreign Affairs (MFA) to implement UN sanctions in Hong Kong as enshrined in the United Nations Sanctions Ordinance (Cap. 537) (UNSO).

The sanctions regulation-making process

3. Noting the major steps in the sanctions regulation-making process and the scope of the instruction issued by the Ministry of Foreign Affairs (MFA) to the Chief Executive (CE) as set out in LC Paper No. CB(1)379/07-08(01), the Chairman was of the view that a more preferable approach was to amend relevant provisions of the UNSO to stipulate the major steps of the process so that the extent of involvement of CPG would also be made clear in the legislation.

Current arrangement under section 3 of UNSO

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4. Members reiterated that they were gravely concerned about the current arrangement under section 3(5) of UNSO which had deprived the HKSAR legislature of its constitutional role in scrutinizing subsidiary legislation. They were also concerned that as Regulations made by CE under section 3(1) of UNSO created new offences, purported to have serious penal effect and conferred vast investigation and enforcement powers, they should be subject to vetting by the Legislative Council (LegCo). The Chairman once again urged that the Administration should re-examine the Subcommittee's earlier suggestion to improve the current arrangement by exploring alternative approaches to implement UN sanctions in a more transparent and accountable manner and to provide LegCo a role in the legislative process. She said that if necessary, members might wish to consider whether suitable amendments should be proposed to UNSO by way of a Member's Bill.

5. The Chairman was of the view that when required to implement a UN sanction, the Administration might need to consider whether this should be effected by (a) making a regulation under UNSO, (b) amending existing legislation, or (c) introducing

Admin a free-standing piece of legislation (such as the enactment of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)). If the Administration decided that the relevant sanction should be implemented by making regulations under UNSO, the Administration should consult the relevant Panel(s) to see if members had any views.

Admin 6. Members noted the Administration's view that the current arrangement under section 3(1) of UNSO helped to ensure the prompt implementation of UN sanctions, which were often time-critical. Nevertheless, the Chairman reiterated members' strong view that the Administration should re-consider the suggestion of consulting LegCo on the draft regulations before forwarding them to CPG for approval. She recalled past scrutiny of the Merchant Shipping (Security of Ships and Port Facilities) Bill and its draft regulations by a Bills Committee under an extremely tight timeframe and stressed that scrutiny by LegCo would not result in delay. On the contrary, involvement of LegCo would render the legislative process more compliant and proper.

Admin 7. Members generally agreed that the suggestions and views in paragraphs 4, 5 and 6 warranted further consideration. Stressing that safeguards had already existed within the legislative process, the Administration nevertheless took note of the Subcommittee's suggestions and views for further consideration and consultation with the Department of Justice.

Way forward

Clerk 8. The Chairman instructed the Clerk to prepare a paper setting out the initial views raised by the Subcommittee on how the current implementation mechanism should be improved. The paper would form the basis for discussion at an internal meeting to be arranged for members to discuss the matter. The Subcommittee would then forward its deliberated views to the Administration for consideration and response in due course.

II Any other business

9. There being no other business, the meeting ended at 5:35 pm.

**Proceedings of the ninth meeting of the
Subcommittee to Examine the Implementation in Hong Kong
of Resolutions of the United Nations Security Council in relation to Sanctions
on Tuesday, 18 December 2007 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 – 000542	Chairman	Introductory remarks	
000543 - 001145	Chairman ALA Administration	<p>(a) The Administration's response to issues raised at the meeting on 30 October 2007 (LC Paper No. CB(1)379/07-08(01)).</p> <p>(b) Members noted the following:</p> <p>(i) the Hong Kong Bar Association (HKBA) had not submitted any further views in addition to its earlier submission of 20 October 2007 (issued vide LC Paper CB(1)108/07-08(01)); and</p> <p>(ii) the Legal Service Division had no further comments on the Administration's response to HKBA's submission and the Administration's views to issues raised at the meeting on 30 October 2007.</p>	
001146 - 003500	Chairman Administration Mr Martin LEE	<p>(a) Discussion on possible legislative approaches for implementing UN sanctions in Hong Kong.</p> <p>(b) The Administration advised that UNSO was passed by the Provisional Legislative Council on 16 July 1997. In the course of preparing the relevant Bill, the Administration had consulted CPG which considered that the enactment of the United Nations Sanctions Bill was the appropriate vehicle for implementing economic and trade sanctions against a place outside China.</p>	The Administration to follow up/consider as stated in paragraphs 4 to 7 of the minutes
003501 - 004000	Chairman Administration Mr Martin LEE	(a) Discussion on the effect of the two-stage involvement of CPG in the sanctions regulation-making process for implementing UNSC resolutions in Hong Kong (namely, the issuance of instructions by MFA to the CE requesting the HKSAR Government to take concrete steps to effectively implement in the HKSAR the sanctions under the specific UNSC resolutions, and CPG's endorsement of and/or comments on the contents of	

Time Marker	Speaker	Subject(s)	Action required
		<p>the draft regulation prepared by HKSAR Government as set out in the Annex to CB(1)379/07-08(01)).</p> <p>(b) The Administration reiterated its stance that -</p> <p>(i) implementation of UN sanctions in HKSAR was a matter of foreign affairs which was the responsibility of CPG; and</p> <p>(ii) the making of regulations by CE to implement the relevant resolution of UNSC under UNSO was in accordance with the Basic Law, and duly endorsed by CPG.</p> <p>(c) The Chairman's view that a more preferable approach was to amend relevant provisions of the UNSO to stipulate major steps of the process so that the extent of involvement of CPG would also be made clear in the legislation.</p>	
004001 - 005800	Chairman Administration Mr Martin LEE	<p>(a) Discussion on ways, if any, to ensure that the penalty prescribed under individual Regulations was pitched at the appropriate level.</p> <p>(b) The Administration's view that the law only prescribed the maximum level of penalty. The level of penalty imposed on specific cases was a matter for the court to decide.</p> <p>(c) The Chairman's and Mr Martin LEE's view that the exclusion of LegCo's scrutiny was not appropriate because the regulations made by CE under section 3(1) of UNSO created new offences and had serious penal effect, as well as conferred vast investigation and enforcement powers.</p>	
005801 - 010200	Chairman Administration Mr Martin LEE	<p>(a) The Administration advised in response to Mr Martin LEE that the Administration would seek technical clarifications from MFA as the UN sanctions were primarily foreign affairs.</p> <p>(b) The Chairman's view that the involvement of LegCo in the legislative process would have a positive effect to the implementation of UN sanctions under UNSO.</p>	

Time Marker	Speaker	Subject(s)	Action required
		(c) The Administration advised that so far, no implementation difficulty had been encountered since the enactment of UNSO in 1997.	
010201 - 010617	Chairman Mr Martin LEE	The way forward	The Clerk to follow up as stated in paragraph 8 of the minutes

Council Business Division 1
Legislative Council Secretariat
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