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Secretary for Commerce, Industry and Technology Bureau
(Attention: Mrs Philomena LEUNG)
Commerce and Industry Branch
Commerce, Industry and Technology Bureau
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9 January 2006

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Fax No. : 2530 5966
Total nos. of page(s) : (4)

Dear Mrs LEUNG,

- (a) **United Nations Sanctions (Iraq) (Amendment) Regulation 2004**
(L.N. 132 of 2004)
- (b) **United Nations Sanctions (Liberia) Regulation 2004**
(L.N. 198 of 2004)
- (c) **United Nations Sanctions (Democratic Republic of the Congo) Regulation**
(L.N. 27 of 2005)
- (d) **United Nations Sanctions (Sudan) Regulation** (L.N. 45 of 2005)
- (e) **United Nations Sanctions (Liberia) Regulation 2005** (L.N. 94 of 2005)
- (f) **United Nations Sanctions (Côte d'Ivoire) Regulation**
(L.N. 122 of 2005)
- (g) **United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005**
(L.N. 123 of 2005)
- (h) **United Nations Sanctions (Sudan) (Amendment) Regulation 2005**
(L.N. 124 of 2005)
- (i) **United Nations Sanctions (Democratic Republic of the Congo) Regulation 2005**
(L.N. 192 of 2005)
- (j) **United Nations Sanctions (Liberia) Regulation 2005 (Amendment) Regulation 2005**
(L.N. 193 of 2005)

I am scrutinizing the above Regulations made under the United Nations Sanctions Ordinance (Cap. 537) ("UNSO") which have been referred to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relations to Sanctions. Some observations have already been made on the Iraq Regulation (paragraphs 12 to 16 of LC Paper No. LS16/04-05) and on the Liberia Regulation (paragraph 7(e), (g) and (h) of LC Paper No. LS36/03-04).

To recapitulate, the following observations have been made –

- (a) serious offences punishable with unlimited fine and imprisonment are created without LegCo's scrutiny;
- (b) the power of search and detention in the Iraq Regulation differs from Part 4B of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) whereby in the latter, court orders are required; and
- (c) though the Administration has deleted some sections in the earlier Iraq Regulation which relate to customs (for example, section 2(1)(a) and 2(5)(d) to the Schedule) "to avoid ultra vires implications", similar provisions in other regulations (for example, in the United Nations Sanctions (Arms Embargoes) Regulation) still appear.

Further, with regard to the Iraq Regulation, how are the United Nations Security Council ("UNSC") decisions, say, the return of cultural properties to Iraq, prohibitions of arms to Iraq except arms required by the United States of America and the United Kingdom, and the Development Fund reflected in the 2004 Regulation?

As for the Liberia Regulation 2005, it is noted that it has already expired but the UNSC has already passed a Resolution 1647 extending the sanctions on Liberia for a further period of 12 months as from 20 December 2005. When will this Resolution be implemented?

With reference to other Regulations, I have the following observations-

Regulations on Sudan (L.N. 45 of 2005 and L.N. 124 of 2005)

(a) *General observation*

In the LC Paper No. CB(1)2029/04-05(03), the Administration has explained that the UNSC decides in Resolution 1591 that all States shall, subject to certain exceptions, freeze all funds, financial assets and economic resources that are on their territories owned or controlled, directly or indirectly by the persons designated by the United Nations Security Council Committee. Could you please elaborate on how this decision is implemented in the Sudan Regulation? As the financial institutions in Hong Kong would be affected, have they been consulted?

"Sanction" as defined in the UNSO, refers to embargoes, mandatory measures implemented against a place outside the People's Republic of China ("PRC"). On 30 November 2001, Mr. Bob Allcock, the Solicitor General, explained to the Panel on Security and the Panel on the Administration of Justice and Legal Services that the UNSO could not be used to implement all decisions of the UNSC and a new Ordinance against terrorism had to be introduced. He said, "UNSO applied to places outside PRC, while UNSCR 1373 was not directed at a place. If UNSCR 1373 was to be implemented through the making of a regulation under UNSO, an

amendment to UNSO would be necessary before the Regulation could be made” (LC Paper No. CB(2)916/01-02). Mr. Ian Wingfield, the Law Officer (International Law) in a letter to the Panel on the Administration of Justice and Legal Services dated 16 December 2002, was also of the same view (LC Paper No. CB(2)734/02-03(01)).

The Amendment Regulation imposes sanctions against “relevant persons” and no amendment to the UNSO was made. Please clarify the scope of the UNSO and whether the Regulation is made within the regulation-making power.

On the designation of person, what if a mistake is made, say, by the United Nations Security Council Committee or by the HKSAR Government when publishing the names in the Gazette? Is there any appeal for the person wrongly “designated”?

(b) On provisions

(i) section 1

For the Chinese term of “有關連人士”(person connected with Sudan), it seems that “與蘇丹” has not been reflected. It is quite confusing since there are definition of “有關人士”, “有關連人士” and also “指明人士” in section 5. Then in section 6C, there is the mentioning of “有關的指明人士” but no such definition is provided. Could this be improved?

As for the term “funds”, it is noted that the word “payment instruments” is rendered as “票據” but as “文書” in the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), which one is more appropriate? Should there be consistency of this term?

(ii) section 8A

Under this provision, if the Chief Executive is satisfied that once certain requirements are met, he may grant a licence for making available funds to a relevant person. One of the requirements is that the funds have been determined by the Chief Executive to be necessary for extraordinary expenses, “and the Committee has been notified by the Chief Executive of the determination, and the Committee has approved the determination” (subsection (2)(b)). Could the Chief Executive notify the United Nations Security Council Committee direct without going through the Ministry of Foreign Affairs?

Regulation on Côte d’Ivoire (L.N. 122 of 2005)

This Regulation expires at midnight on 14 December 2005. A new resolution 1643(2005) has been passed by the UNSC deciding, inter alia, to renew provisions of paragraphs 7 to 12 of Resolution 1572(2004) until 15 December 2006. Similar to the Regulation on Sudan, this Regulation also empowers the Chief Executive

to specify “a relevant person” and it is a prohibition to make available funds to the “relevant person”. During the period when a new Regulation is not yet in place, how can this decision be implemented in Hong Kong?

Regulations on Congo (L.N. 27 of 2005, L.N. 123 of 2005 and L.N.192 of 2005)

By Resolution 1649(2005), the UNSC has decided that, inter alia, for a period expiring on 31 July 2006, the provisions of para. 13 to 16 of Resolution 1596 shall extend to certain individuals, as designated by the United Nations Security Council Committee. How and when will this Resolution be implemented?

It is much appreciated if you could let us have your response to the above observations on or before 13 January 2006 both in Chinese and English for the discussion in the meeting on 17 January 2006.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

c.c.: LA