

立法會
Legislative Council

LC Paper No. LS42/05-06

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

**Provisions in the United Nations Sanctions Regulations
that implement decisions of the United Nations
Security Council Resolutions against designated persons**

At the Subcommittee meeting on 7 February 2006, members requested the legal adviser to the Subcommittee to set out the relevant provisions in the 10 Regulations made under the United Nations Sanctions Ordinance (Cap. 537) (“UNSO”) since July 2004 which impose sanctions against designated persons instead of against a place as provided in UNSO. These should include provisions which seek to freeze funds held by a person designated in the relevant United Nations Security Council Resolution (“UNSCR”).

2. A table setting out a summary of the relevant decisions of the UNSCRs and the relevant provisions in the 10 Regulations on Iraq, Liberia, Democratic Republic of the Congo, Sudan and Côte d’Ivoire that implement those decisions is in **Annex I**. Decisions marked with “*” relate to the freezing of funds of designated persons. Provisions, if any, relating to the making available of funds to designated persons to implement the latter decisions are shown in the third column of the table.

3. Decisions on Liberia as contained in UNSCR 1532 which was adopted by the United Nations Security Council (“UNSC”) in 2004 and which relate to the freezing of funds of designated persons are reproduced in **Annex II(i)**. Sections 8, 9, 16 and 39 of the United Nations Sanctions (Liberia) Regulation 2005 which seek to implement those decisions are set out in **Annex II(ii)**.

4. Decisions on Sudan as contained in UNSCR 1591 which was adopted in 2005 and which relate to the freezing of funds of designated persons are also reproduced (**Annex III(i)**). The relevant provisions are sections 6A, 8A and 23A of the United Nations Sanctions (Sudan) (Amendment) Regulation 2005. They are set out in **Annex III(ii)**. As decisions on the Democratic Republic of the Congo and Côte d’Ivoire which relate to the freezing of funds of designated persons and corresponding provisions in the Democratic Republic of the Congo and Cote D’Ivoire Regulations are substantially the same as those for Sudan in **Annex III**, they are not reproduced.

Encl.

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**Provisions in the United Nations Sanctions Regulations
that implement decisions of the United Nations Security Council Resolutions**

UNSCR	Decisions of the UNSCR calling on all Member States to take measures	Provisions in Regulation that implement UNSCR decisions
(A) <u>The United Nations Sanctions (Iraq) (Amendment) Regulation 2004</u> (in force since 9 July 2004)		
UNSCR 1483 of 22 May 2003 (no expiry date)	(i) to facilitate the return of Iraqi cultural properties; (ii) to disapply previous trade prohibitions and provision of financial or economic resources to Iraq; (iii) continue to apply prohibition on sale or supply of arms to Iraq except to U.S.A. and U.K. as occupying powers in Iraq; and *(iv) to freeze funds or other financial assets or economic resources previously held by Iraq government or removed from Iraq, or acquired by Saddam Hussein or other senior officials and transfer those funds to the Iraq Development Fund.	original sections 2 & 3 in the earlier Iraq Regulation relating to prohibition of import and export of goods were repealed. new section 3A empowers the Chief Executive to grant a licence for the supply of arms to the occupying powers in Iraq.
(B)(1) <u>The United Nations Sanctions (Liberia) Regulation 2004</u> (in force from 3 to 21 December 2004)		
UNSCR 1521 of 22 December 2003 (till 21 December 2004)	(i) to prevent the supply of arms to Liberia subject to certain exceptions; (ii) to prevent provision of technical advice, training, assistance subject to certain exceptions; (iii) to prevent the entry or transit of certain named persons such as the senior members of former President Charles Taylor's Government; (iv) to prevent the import of all rough diamonds from Liberia; (v) to prevent the import of all round logs and timber products from Liberia; and (vi) to establish a Committee to designate persons subject to certain measures and to update the list of designated person regularly.	sections 3, 10 and 12 sections 4 and 13 sections 7 and 8 section 5 section 6

<p>(B)(2) <u>The United Nations Sanctions (Liberia) Regulation 2005</u> (section 10 on the prohibition of import of diamonds was in force from 10 to 20 June 2005 and sections 3 to 7, 11 to 15 and Part 5 were in force from 10 June to 20 December 2005)</p>		
<p>UNSCR 1532 of 12 March 2004 (till 21 December 2004)</p>	<p>*To freeze funds, financial assets and economic resources, held by persons including former President Charles Taylor and those persons designated by the Committee and should ensure that neither these nor any other funds be made available for the benefit of such persons (full text in Annex II(i)).</p>	<p>section 8 provides that subject to certain exceptions under section 9 and except with the authority of a licence under section 16, a person shall not make available any funds for the benefit of a relevant person specified by the Chief Executive under section 39 (full text in Annex II(ii))</p>
<p>UNSCR 1579 of 21 December 2004 (till 20 December 2005)</p>	<p>To renew decisions (i), (ii), (iii) and (v) in UNSCR 1521 for 12 months but for decision (iv), i.e. to renew the prohibition on the import of diamonds, only for 6 months.</p>	<p>sections 3 to 7 and 10 to 15</p>
<p>(B)(3) <u>The United Nations Sanctions (Liberia) Regulation 2005 (Amendment) Regulation 2005</u> (in force from 28 October to 20 December 2005)</p>		
<p>UNSCR 1607 of 21 June 2005 (valid till 20 December 2005)</p>	<p>To renew decision (iv) of UNSCR 1521 i.e. the prohibition on the import of diamonds, for a further 6 months.</p>	<p>new section 10A</p>
<p>(C)(1) <u>United Nations Sanctions (Democratic Republic of the Congo) Regulation</u> (in force from 4 March to 31 July 2005)</p>		
<p>UNSCR 1493 of 28 July 2003 (till 27 July 2004)</p>	<p>(i) to prevent the supply of arms to all foreign and Congolese armed groups in some territories subject to some exceptions; and</p> <p>(ii) to prevent any provision of assistance, advice or training to all foreign and Congolese armed groups in some territories.</p>	<p>sections 3 to 6 and 8</p> <p>sections 7 and 9</p>
<p>UNSCR 1552 of 27 July 2004 (till 31 July 2005)</p>	<p>To renew the measures in UNSCR 1493.</p>	

(C)(2) <u>United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005</u> (in force from 8 to 31 July 2005)		
UNSCR 1596 of 18 April 2005 (till 31 July 2005)	(i) to adopt the measures in UNSCR 1493 but subject to certain exceptions; (ii) to prevent the entry or transit of certain designated persons; and *(iii) to freeze funds which are owned by persons designated by the Committee and shall ensure that no funds are made available for the benefit of such persons subject to certain exceptions.	new sections 7B and 7C new sections 7A, 9A and 24A
(C)(3) <u>United Nations Sanctions (Democratic Republic of the Congo) Regulation 2005</u> (in force since 28 October 2005)		
UNSCR 1616 of 29 July 2005 (till 31 July 2006)	To renew the previous measures for 12 more months.	sections 3 to 5 and 7 to 13
(D)(1) <u>United Nations Sanctions (Sudan) Regulation</u> (in force since 1 April 2005)		
UNSCR 1556 of 30 July 2004 (no expiry date)	(i) to prevent the supply of arms to all non-governmental entities and individuals in the states of North Darfur, South Darfur and West Darfur subject to certain exceptions; and (ii) to prevent provision of technical training or assistance subject to certain exceptions.	sections 2 to 4 and 7 sections 6 and 8
(D)(2) <u>United Nations Sanctions (Sudan) (Amendment) Regulation 2005</u> (in force since 8 July 2005)		
UNSCR 1591 of 29 March 2005 (no expiry date)	(i) to establish a Committee to designate persons subject to the prohibitive measures; (ii) to prevent entry or transit of designated individuals subject to certain exceptions; and *(iii) to freeze funds which are owned by persons designated by the Committee and shall ensure that no funds are made available for the benefit of such persons subject to certain exceptions (full text in Annex III(i)).	new sections 6B and 6C new sections 6A, 8A and 23A (full text in Annex III(ii))

(E) <u>United Nations Sanctions (Côte d'Ivoire) Regulation</u> (in force from 8 July to 14 December 2005)		
UNSCR 1572 of 15 November 2004 (till 14 December 2005)	<ul style="list-style-type: none"> (i) to prevent the supply of arms to Côte d'Ivoire; (ii) to prohibit provision of technical advice, training, assistance subject to certain exceptions; (iii) to prevent entry or transit of individuals designated by the Committee; and * (iv) to freeze funds which are owned by persons designated by the Committee and shall ensure that no funds are made available for the benefit of such persons subject to certain exceptions. 	<p>sections 3 to 5</p> <p>sections 7 and 12</p> <p>sections 9 and 10</p> <p>sections 8, 13 and 36</p>

Resolution 1532 (2004)

Adopted by the Security Council at its 4925th meeting,
on 12 March 2004

The Security Council,

.....

Determining that this situation constitutes a threat to international peace and security in West Africa, in particular to the peace process in Liberia,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that, to prevent former Liberian President Charles Taylor, his immediate family members, in particular Jewell Howard Taylor and Charles Taylor, Jr., senior officials of the former Taylor regime, or other close allies or associates as designated by the Committee established by paragraph 21 of resolution 1521 (2003) (hereinafter, "the Committee") from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the sub-region, all States in which there are, at the date of adoption of this resolution or at any time thereafter, funds, other financial assets and economic resources owned or controlled directly or indirectly by Charles Taylor, Jewell Howard Taylor, and Charles Taylor, Jr. and/or those other individuals designated by the Committee, including funds, other financial assets and economic resources held by entities owned or controlled, directly or indirectly, by any of them or by any persons acting on their behalf or at their direction, as designated by the Committee, shall freeze without delay all such funds, other financial assets and economic resources, and shall ensure that neither these nor any other funds, other financial assets or economic resources are made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of such persons;

2. *Decides* that the provisions of paragraph 1 above do not apply to funds, other financial assets and economic resources that:

(a) have been determined by relevant State(s) to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant State(s) to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Committee within two working days of such notification;

(b) have been determined by relevant State(s) to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant State(s) to the Committee and has been approved by the Committee; or

(c) have been determined by relevant State(s) to be the subject of a judicial administrative, or arbitral lien or judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement provided that the lien or judgement: was entered prior to the date of the present resolution; is not for the benefit of a person referred to in paragraph 1 above or an individual or entity identified by the Committee; and has been notified by the relevant State(s) to the Committee;

3. *Decides* that all States may allow for the addition to accounts subject to the provisions of paragraph 1 above of:

(a) interest or other earnings due on those accounts; and

(b) payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of paragraph 1 above;

provided that any such interest, other earnings and payments continue to be subject to those provisions;

United Nations Sanctions (Liberia) Regulation 2005

Making available funds, etc. to certain persons or entities

8. Prohibition against making available funds, etc. to certain persons or entities

(1) Subject to the exception in section 9 and except under the authority of a licence granted under section 16(1), a person shall not make available, directly or indirectly, any funds or other financial assets or economic resources to or for the benefit of a relevant person or a relevant entity.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In any proceedings for an offence under subsection (2), it is a defence for a person charged to prove that he did not know and had no reason to believe that the funds or other financial assets or economic resources concerned were to be made available to or for the benefit of a relevant person or a relevant entity.

(4) This section applies to—

- (a) a person within the HKSAR; and
- (b) a person acting elsewhere who is—
 - (i) both a Hong Kong permanent resident and a Chinese national; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

9. Exception to prohibition against making available funds, etc. to certain persons or entities

Section 8 shall not prevent the addition to an account owned or controlled, directly or indirectly, by a relevant person or a relevant entity of—

- (a) interest or other earnings due on that account; and
- (b) payments due under contracts, agreements or obligations that arose prior to 12 March 2004,

but any such interest, other earnings and payments shall be subject to section 8(1).

16. Licence for making available funds, etc. to certain persons or entities

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, on application, grant a licence for making available funds or other financial assets or economic resources to or for the benefit of a relevant person or a relevant entity.

(2) The requirements referred to in subsection (1) are as follows—

(a) the funds or other financial assets or economic resources have been determined by the Chief Executive to be—

(i) necessary for basic expenses, including payment for foodstuffs, rents, mortgages, medicines and medical treatment, taxes, insurance premiums, and public utility charges; or

(ii) exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services,

and the Committee has been notified by the Chief Executive of the intention to authorize, where appropriate, access to such funds or other financial assets or economic resources, and the Committee has not made a negative decision within 2 working days of such notification;

(b) the funds or other financial assets or economic resources 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;

(c) the funds or other financial assets or economic resources have been determined by the Chief Executive to be the subject of a judicial, administrative or arbitral lien or judgment, and the lien or judgment—

(i) was entered prior to 12 March 2004;

(ii) is not for the benefit of a relevant person or a relevant entity; and

(iii) has been notified by the Chief Executive to the Committee.

(3) A licence granted by the Chief Executive under subsection (1), on his being satisfied that the requirements in subsection (2)(c) are met, shall only authorize that the funds or other financial assets or economic resources be used to satisfy the relevant lien or judgment.

39. Specification of relevant person or relevant entity by Chief Executive

The Chief Executive may by notice published in the Gazette specify a person or an entity referred to in the list maintained by the Committee for the purposes of paragraph 1 of Resolution 1532 as a relevant person or a relevant entity.

Resolution 1591 (2005)

**Adopted by the Security Council at its 5153rd meeting, on
29 March 2005**

The Security Council,

.....

Determining that the situation in Sudan continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

.....

3. *Decides*, in light of the failure of all parties to the conflict in Darfur to fulfil their commitments,

(a) to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council (herein "the Committee"), to undertake to following tasks:

.....

- ii. to designate those individuals subject to the measures imposed by subparagraphs (d) and (e) of this paragraph and to consider requests for exemptions in accordance with subparagraphs (f) and (g);

.....

(e) that all States shall freeze all funds, financial assets and economic resources that are on their territories on the date of adoption of this resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons designated by the Committee pursuant to subparagraph (c) above, or that are held by entities owned or controlled, directly or indirectly, by such persons or by persons acting on their behalf or at their direction, and decides further that all States shall ensure that no funds, financial assets or economic resources are made available by their nationals or by any persons within their territories to or for the benefit of such persons or entities;

.....

(g) that the measures imposed by subparagraph (e) of this resolution do not apply to funds, other financial assets and economic resources that:

- i. have been determined by relevant States to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant States to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Committee within two working days of such notification;
- ii. have been determined by relevant States to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant States to the Committee and has been approved by the Committee, or
- iii. have been determined by relevant States to be the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, or other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered prior to the date of the present resolution, is not for the benefit of a person or entity designated by the Committee, and has been notified by the relevant States to the Committee;

United Nations Sanctions (Sudan) (Amendment) Regulation 2005

Making available funds, etc. to certain persons or entities

**6A. Prohibition against making available funds, etc.
to certain persons or entities**

(1) Except under the authority of a licence granted under section 8A(1), a person shall not make available any funds or other financial assets or economic resources to or for the benefit of a relevant person or a relevant entity.

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine and to imprisonment for 7 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In any proceedings for an offence under subsection (2), it is a defence for a person charged to prove that he did not know and had no reason to believe that the funds or other financial assets or economic resources concerned were to be made available to or for the benefit of a relevant person or a relevant entity.

(4) This section applies to—

(a) a person within the HKSAR; and

(b) a person acting elsewhere who is—

(i) both a Hong Kong permanent resident and a Chinese national; or

(ii) a body incorporated or constituted under the law of the HKSAR.

**8A. Licence for making available funds, etc.
to certain persons or entities**

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, on application, grant a licence for making available funds or other financial assets or economic resources to or for the benefit of a relevant person or a relevant entity.

(2) The requirements referred to in subsection (1) are as follows—

(a) the funds or other financial assets or economic resources have been determined by the Chief Executive to be—

(i) necessary for basic expenses, including payment for foodstuffs, rents, mortgages, medicines and medical treatments, taxes, insurance premiums, and public utility charges; or

(ii) necessary for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services,

and the Committee has been notified by the Chief Executive of the intention to authorize, where appropriate, access to such funds or other financial assets or economic resources, and the Committee has not made a negative decision within 2 working days of such notification;

(b) the funds or other financial assets or economic resources 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;

(c) the funds or other financial assets or economic resources have been determined by the Chief Executive to be the subject of a judicial, administrative or arbitral lien or judgment, and the lien or judgment—

(i) was entered prior to 29 March 2005;

(ii) is not for the benefit of a relevant person or a relevant entity; and

(iii) has been notified by the Chief Executive to the Committee.

(3) A licence granted by the Chief Executive under subsection (1), on his being satisfied that the requirements in subsection (2)(c) are met, shall only authorize that the funds or other financial assets or economic resources be used to satisfy the relevant lien or judgment.

**23A. Specification of relevant person or relevant
entity by Chief Executive**

The Chief Executive may by notice published in the Gazette specify a person or an entity designated by the Committee with respect to the measures set out in paragraph 3(e) of Resolution 1591 as a relevant person or a relevant entity.