

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

**Administration's Response to**  
**Issues and Questions raised by Members**  
**At the Closed Meeting held on 3 April 2008**

This note sets out the Administration's response to the following two issues raised by Members of the LegCo Subcommittee on the background leading to the enactment of the United Nations Sanctions Ordinance (Cap. 537) ("UNSO") (as set out in paragraph 2 of the Appendix to the LegCo Subcommittee's letter dated 28 April 2008 ("the Appendix")) -

- (a) the basis or reasons for seeking the Central People's Government ("CPG")'s approval or for CPG's giving approval to the enactment of the United Nations Sanctions Bill; and
- (b) whether effective authorization has been given for the Provisional Legislative Council to pass the UNSO as the vehicle for fulfilling CPG's international obligations to UN.

2. We believe we have dealt with these issues in our previous written and oral representations. However, we are pleased to provide clarifications and comments on the background as requested by the Subcommittee.

3. It is noted in paragraph 1 of the Appendix that "there is no provision in the Basic Law which provides that laws to be enacted by the HKSAR legislature [have] to be approved by the CPG, nor is there any provision in the Basic Law which empowers the CPG to do so".

4. It appears from paragraph 1 of the Appendix that the above two issues raised by the Subcommittee concern the following statement by the then Secretary for Trade and Industry (STI) during the resumption of Second Reading debate on the United Nations Sanctions Bill at the Provisional Legislative Council meeting on 16 July 1997: "the Central People's Government has indicated its approval to the Bill".

5. The statement by STI was in fact delivered originally in Chinese and reads: “中央人民政府已對本法案表示贊同”. A more accurate translation of this statement would be: “the Central People’s Government has indicated its agreement to the Bill”.

6. To help clarify the background to these issues, we set out below the salient points of the relevant legal and factual context:

- (a) Foreign affairs are the sole responsibility of the CPG (Article 13 of the Basic Law).
- (b) The United Nations Charter is an international agreement to which the People’s Republic of China (“PRC”) is a party. Pursuant thereto, it is an international obligation of the PRC to implement UN sanctions in accordance with the resolutions of the Security Council (Articles 25 and 41 of the UN Charter).
- (c) The responsibility of the CPG to ensure the implementation of UN sanctions in the HKSAR is a matter of discharging the international obligation owed by the PRC to the UN, and hence a matter of “foreign affairs” which is the responsibility of the CPG in accordance with the Basic Law.
- (d) The Chief Executive (“CE”) has the constitutional obligation under Article 48(8) of the Basic Law to: “implement the directives issued by the [CPG] in respect of the relevant matters provided for in this Law”. That obligation includes the implementation of UN sanctions pursuant to the CPG’s directives.
- (e) Where matters relating to foreign affairs are to be implemented in the HKSAR as “law”, this has to be achieved by means of application of national laws under Article 18 and Annex III of the Basic Law or by legislation which has domestic application in the HKSAR, in accordance with the Basic Law.
- (f) LegCo’s powers are derived from and conferred by the Basic Law. LegCo is competent to enact laws on matters relating to “foreign affairs” insofar as it is so empowered by and in accordance with the Basic Law, including giving effect to the international obligations

applicable in the HKSAR (see, in particular, Articles 13, 17, 48, 56, 62, 73 and 153 of the Basic Law). However, Article 73 of the Basic Law has not conferred any power on the Government of the HKSAR or LegCo to override, curtail or regulate the CPG's sovereign power in respect of its dealings in foreign affairs affecting the HKSAR.

- (g) Where HKSAR primary legislation is required for the implementation of the relevant CPG directive (as in the case of the UN Sanctions Bill), it is the constitutional duty of the CE (i) to consult the ExCo before introducing the relevant bill into LegCo (see Article 56(2) of the Basic Law) and (ii) to ensure that the bill is consistent with the relevant CPG directive before introducing the bill (cf. Article 48(8) of the Basic Law).
- (h) By reason of the above, where the relevant CPG directive requires that the CPG be consulted on the draft legislation before it is made by the HKSAR, CE is under a constitutional duty to consult the CPG on the bill.

7. Before 1997, UN sanctions were implemented by the UK Government by Orders in Council which could not be amended by the UK Parliament or the colonial legislature in Hong Kong. There was a need to ensure that a legislative framework be put in place in Hong Kong to enable UN sanctions to continue to be implemented in the HKSAR after the Reunification.

8. For the purpose of implementing UN sanctions in the HKSAR from July 1997, the relevant CPG directive to the CE required that legislative measures be taken in the HKSAR to implement UN sanctions and that the CPG be consulted on the draft legislation before it was made by the HKSAR.

9. Pursuant to the above CPG directive, and after consultation with the CPG, the CE in Council decided on 8 July 1997 that the United Nations Sanctions Bill should be introduced into the Provisional Legislative Council on 9 July 1997 to establish a statutory framework enabling the CE to implement directives issued by the CPG relating to specific UN sanctions.

10. As regards the Provisional Legislative Council, its formation by the Preparatory Committee was held by the Court of Final Appeal in *Ng Ka Ling v*

*The Director of Immigration*<sup>1</sup> to be legally constituted within the 1990 Decision of the National People's Congress (dated 4 April 1990) and consistent with the Basic Law (para 169 and 171 of the judgment), and its legislative function is briefly outlined as follows (at para 165 of the judgment):

“On 24 March 1996, the Preparatory Committee decided to form the Provisional Legislative Council. ...Its duties were specified including the enactment of laws “which are essential for the normal operation of” the Region and dealing with other matters apart from those specified that have to be dealt with by the Provisional Legislative Council before the formation of the First Legislative Council of the Region. ...”

11. Accordingly, the UNSO serves as the statutory framework for the implementation in the HKSAR of the PRC's treaty obligations under Chapter VII of the United Nations Charter, i.e., the sanctions imposed by the UN Security Council (see Articles 25 and 41 of the UN Charter). The enactment of the UNSO was an instance of the enactment of laws relating to foreign affairs by the Provisional Legislative Council in accordance with the Basic Law and the Preparatory Committee's Decision of 24 March 1996, after the CPG's agreement to the bill was obtained in accordance with the relevant CPG directive.

12. We trust the above has clarified the basis upon which the HKSAR obtained consent from the CPG regarding the enactment of the UNSO, and that the Provisional Legislative Council was empowered to pass the UNSO.

Commerce and Economic Development Bureau  
Department of Justice  
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<sup>1</sup> FACV No. 14 of 1998.