

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
Suggestions made by the Subcommittee to Improve the Current
Regulation-making Mechanism at the Meeting held on 2 June 2008

This note sets out the Administration's response to the suggestions made by the Subcommittee (as set out in the Appendix to the Subcommittee's letter dated 4 June 2008) with regard to the regulation-making mechanism under the United Nations Sanctions Ordinance (Cap. 537) ("the UNSO").

(a) Use of a Model Law

2. In the course of examining the 26 Regulations made under the UNSO since July 2004, the Subcommittee has suggested that a model law approach would be conducive to improving efficiency both in terms of the Administration's preparation of the draft Regulations and Members' scrutiny.

3. The Administration accepts the rationale behind the Subcommittee's proposal, noting that the sanctions decided by the United Nations Security Council (UNSC) in respect of different countries or places are often similar in terms of broad scope. For example, such measures frequently include embargoes on the provision of arms and technical advice, travel restrictions and measures related to the availability of funds and other assets. However, the specific details of the sanction measures generally vary from one UNSC resolution to another. For example, the specific targets of sanctions and the emphases on the types of arms to be subject to embargo may be different. There are also exceptions to "typical" sanctions, for example when sanctions related to the proliferation of nuclear materials are concerned.

4. We therefore consider that it would be very difficult to devise "model clauses" for incorporation into the UNSO that would be appropriate for adoption in all subsidiary legislation on UN sanctions. Rather than helping to speed up the process of implementing UNSC resolutions in Hong Kong, we are concerned that incorporating such clauses might require us to take more time. This is because we would need to check carefully the extent to which new UNSC resolutions deviated from such "model clauses", given that there are often variations in the detailed wording of the resolutions.

(b) Involving the Legislative Council (LegCo) during the regulation-making process

5. The Subcommittee has previously made the following specific suggestions for engaging the LegCo during the regulation-making process –

- (i) The Administration should consult the appropriate LegCo Panel before deciding whether the implementation of a UNSC resolution should be by way of an independent bill or by making regulations under UNSO. If the Administration decides that the latter option is to be taken, it should provide a copy of the draft regulation to the Panel on Commerce and Industry and seek Members' views thereon. When finalizing the draft regulation for onward submission to the Office of the Commissioner of the Ministry of Foreign Affairs (MFA) in the HKSAR, the Administration should take into account the views and concerns expressed by LegCo Members.
- (ii) If a regulation is to be made under the UNSO, after gazettal, it should be considered by the House Committee in accordance with the normal procedure for dealing with subsidiary legislation, under which members may decide to set up a subcommittee to examine the regulation in question.

6. UN sanctions relate to the international obligations of the People's Republic of China and are often time-critical. It is therefore clearly desirable to implement measures pursuant to the MFA's instructions as soon as possible. The current process for implementing Regulations under the UNSO, which has since June 2007 been enhanced as a result of discussion with the Subcommittee is effective and helps to ensure the prompt implementation of UN sanctions in the Hong Kong SAR. In respect of the specific suggestion at paragraph 5(i) above, we consider that the current process provides the fastest route to put in place the Regulations and we would not wish to add further steps to the process that could create a delay in implementing UN sanctions.

7. We recognise the importance of keeping LegCo informed of matters relating to the implementation of UN sanctions under the UNSO, and we have no objection to the suggestion at paragraph 5(ii) above. After the gazettal of the regulations, should LegCo Members consider that amendments

are needed, we would be open to discussion of the need for such amendments. Furthermore, we will continue to consider other viable ways to ensure that LegCo is kept informed of the process of implementing UN sanctions.

(c) Proposal to facilitate LegCo's scrutiny role

8. The Administration notes the Subcommittee's request for more information to be provided in the LegCo Briefs that are issued in respect of each gazetted Regulation. Although we consider that the information currently included in the LegCo brief is quite comprehensive, we welcome the Subcommittee's suggestions, and we will consider the extent to which we might be able to provide more information as requested.

9. For example, with regard to suggestion (i), although the Administration will adopt the speediest way to implement UN sanctions (which usually will be by way of subsidiary legislation under the UNSO), where the relevant sanction requires implementing measures that go outside the scope or vires of the UNSO, consideration will need to be given to amending existing legislation (e.g., UNATMO) or even to the enactment of new legislation. We could consider providing in the LegCo Brief an explanation of why a particular legislative route has been followed. As regards the other suggestions by the Subcommittee, we note the Subcommittee's advice and will where appropriate, include in the LegCo Brief additional information which would help clarify the contents of the Regulations.

Commerce and Economic Development Bureau
Department of Justice
June 2008