

立法會
Legislative Council

LC Paper No. LS93/03-04

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 July 2004**

**United Nations Sanctions Ordinance (Cap. 537)
United Nations Sanctions (Iraq) (Amendment) Regulation 2004 (L.N. 132)**

The United Nations Sanctions (Iraq) (Amendment) Regulation 2004 ("the Iraq Regulation") is made under the United Nations Sanctions Ordinance (Cap. 537) by the Chief Executive on the instructions of the Ministry of Foreign Affairs of the People's Republic of China ("MFA") after consultation with the Executive Council. As the application of sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) is specifically excluded, the Regulation is not required to be laid before the Legislative Council and is not subject to amendment by the Legislative Council.

2. The Iraq Regulation gives effect to a decision of the Security Council of the United Nations ("the Security Council") to lift all prohibitions related to trade with Iraq contained in paragraph 10 of Resolution 1483 on 22 May 2003. In that decision, the prohibitions related to the sale or supply to Iraq of arms and related material, except arms and related material required by the United States of America and the United Kingdom of Great Britain and Northern Ireland as occupying powers under unified command ("the Authority" as referred to in the Resolution), shall continue to apply. Certain textual amendments are also made to the Chinese text of the existing United Nations Sanctions (Iraq) Regulation (Cap. 537 sub. leg. B).

3. In response to the request of the Legal Service Division, the Administration has provided an explanatory note to the specific provisions of the Iraq Regulation (Appendix A).

4. Members may recall that a Sub-committee on United Nations Sanctions (Liberia) Regulation 2003 was set up to examine that Regulation, which was also made under the United Nations Sanctions Ordinance to give effect to a decision of the Security Council. At the meetings of the Sub-committee, the Administration undertook to provide to LegCo a formal document issued by the Chief Secretary for Administration to confirm MFA's instructions on the implementation of the Security Council resolutions with respect to all regulations to be made under Cap. 537 in future. (para. 20 of LC Paper No. CB(2)2892/03-04). The Legal Service Division has written to the Administration to ask for the aforesaid formal document (Appendix B) and will report further upon receipt of it.

5. In the further report of the Sub-committee to the House Committee (LC Paper No. CB(2)2892/03-04), the Sub-committee considers that due to time constraints in the last term, it recommends that a subcommittee under the House Committee be formed in the following legislative term to follow up the arrangements for implementing the Security Council resolutions in relation to sanctions in Hong Kong (para. 21 of the report). Members may wish to consider the appropriate way to deal with the Iraq Regulation.

Encl

Prepared by

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28 July 2004

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28 July 2004

Dear Mr Lau,

**United Nations Sanctions (Iraq) (Amendment) Regulation 2004
(L.N. 132 of 2004)**

As you may recall, the Administration agreed with the LegCo Subcommittee on United Nations Sanctions (Liberia) Regulation 2003 that the Administration would provide to LegCo a formal document issued by the Chief Secretary for Administration ("CS") to confirm the instructions of the Ministry of Foreign Affairs of the PRC on the implementation of resolutions of the Security Council of the United Nations with respect to all regulations to be made under the United Nations Sanctions Ordinance (Cap.537).

I wonder if the Administration could let us have the aforesaid document issued by CS as soon as practicable. Please let me have a reply in both languages before 2nd August 2004.

Yours sincerely,

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Assistant Legal Adviser

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United Nations Sanctions (Iraq) (Amendment) Regulation 2004

The United Nations Sanctions (Iraq) (Amendment) Regulation 2004 seeks to implement the decision in relation to the lifting of trade sanctions against Iraq as stipulated in paragraph 10 of UNSCR 1483 by amending the United Nations Sanctions (Iraq) Regulation. The opportunity is taken to review and amend the United Nations Sanctions (Iraq) Regulation having regard to regulations made under the Ordinance since 1997 (when the United Nations Sanctions (Iraq) Regulation was made). The main amendments are as follows -

- (a) To define “authorized officer” as designated officers only and cross out CE’s power in authorizing any person to be an authorized officer.
- (b) to repeal section 2 to remove the prohibition against importation of goods from Iraq into the HKSAR;
- (c) to repeal section 3 to remove the prohibition against exportation of goods from Iraq;
- (d) to add a new section 3A to provide for the granting of licences for the supply or delivery of arms and related material in cases where exemptions provided for in UNSCR 1483 are satisfied;
- (e) to add a new section 3B to make it an offence in providing false information or documents for the purpose of obtaining licences and to provide for the penalties;
- (f) to repeal section 6 as “supply” of goods comprehends the “export” of goods;
- (g) to amend section 7 so that its scope of application is consistent with other prevailing regulations under the Ordinance;
- (h) to amend section 8 to provide for the power to search suspected vehicles and a time limit for detaining ships, aircrafts and vehicles;

- (i) to add a new section 11A to require an authorized officer to produce evidence of his identity and authority before or on exercising a power conferred by the United Nations Sanctions (Iraq) Regulation;
- (j) to repeal section 12(1) so that the United Nations (Iraq) Regulation will no longer apply to any ship, aircraft or body corporate that purports to be registered in the HKSAR to avoid ultra vires implications;
- (k) to repeal section 1 of the Schedule to remove the excessive power to request any person to furnish information for the purpose of securing compliance with or detecting evasion of the United Nations Sanctions (Iraq) Regulation; and
- (l) to delete the provisions on offences relating to customs in the United Nations Sanctions (Iraq) Regulation (i.e. sections 8(6)(d), 9 and section 2(1)(a) and 2(5)(d) of the Schedule) to avoid ultra vires implications.