

立法會
Legislative Council

LC Paper No. CB(1)1564/08-09
(These minutes have been seen by
the Administration)

Ref : CB1/HS/2/08

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

**Minutes of the third meeting on
Tuesday, 31 March 2009 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan
Hon Tanya CHAN

**Public Officers
attending** : Ms Linda LAI, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Miss Wendy CHUNG
Principal Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)

Miss LEE Sau-kong
Deputy Principal Government Counsel (Mutual Legal
Assistance)
Department of Justice

Ms Agnes CHEUNG
Senior Government Counsel
Department of Justice

Ms Francoise LAM
Senior Government Counsel
Department of Justice

Ms Frances HUI
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Annette LAM
Senior Council Secretary (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1109/08-09 -- Minutes of meeting held on
24 February 2009)

The minutes of the meeting held on 24 February 2009 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1007/08-09(01) -- Administration's response to issues
raised at the meeting on 24
February 2009

LC Paper No. CB(1)546/08-09(01) -- Administration's letter dated
9 January 2009

Papers provided by the Administration on Regulations gazetted since
October 2008

LC Paper No. CB(1)1060/08-09(01) -- Administration's paper on United
Nations Sanctions (Democratic
Republic of the Congo) Regulation
2009 (L.N. 37 of 2009)

LC Paper No. CB(1)1162/08-09(01) -- Mark-up version of the United
Nations Sanctions (Democratic
Republic of the Congo) Regulation
2009 (L.N. 37 of 2009)

- LC Paper No. CB(1)1059/08-09(01) -- Administration's paper on United Nations Sanctions (Liberia) Regulation 2009 (L.N. 38 of 2009) and United Nations Sanctions (Liberia) Regulation 2008 (Repeal) Regulation (L.N. 39 of 2009)
- LC Paper No. CB(1)1162/08-09(02) -- Mark-up version of the United Nations Sanctions (Liberia) Regulation 2009 (L.N. 38 of 2009)
- LC Paper No. CB(1)418/08-09(01) -- Administration's paper on United Nations Sanctions (Côte d'Ivoire) (No. 2) Regulation 2008 (L.N. 276 of 2008)
- Annex to LC Paper No. LS10/08-09 -- Administration's paper on United Nations Sanctions (Arms Embargoes) (Amendment) Regulation 2008 (L.N. 236 of 2008) and United Nations Sanctions (Federal Republic of Yugoslavia) (Prohibition on Terrorist Activity) Regulation (Repeal) Regulation (L.N. 237 of 2008)

Reports prepared by the Legal Service Division on Regulations gazetted since October 2008

- LC Paper No. LS49/08-09 -- Report on Regulations gazetted on 13 March 2009 to the House Committee meeting on 20 March 2009
- LC Paper No. LS25/08-09 -- Report on Regulations gazetted on 12 December 2008 to the House Committee meeting on 2 January 2009
- LC Paper No. LS10/08-09 -- Report on Regulations gazetted on 31 October 2008 to the House Committee meeting on 7 November 2008)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Admin

3. The Administration was requested to inform the Panel on Commerce and Industry (CI Panel) in future the implementation of the UNSC resolutions that had direct relevance to and impact on trade and industry in Hong Kong, by way of a LegCo Brief providing information on the relevant UNSC resolution, the trade relation between the country under sanction and Hong Kong, and the implications on the economy of Hong Kong. The Chairman requested the Clerk to convey the Subcommittee's view to the CI Panel.

Clerk

4. As regards the mark-up version of the United Nations Sanctions (Cote d'Ivoire) (No. 2) Regulation 2008, the Administration agreed, for future sanctions regulations, to:

- (a) consider amending section 9(1) of Part 3 as "On application, the Chief Executive, if satisfied that any of the requirements in subsection (2) is met, shall grant, as appropriate-";
- (b) consider amending section 10(1) of Part 3 as "On application, the Chief Executive, if satisfied that any of the requirements in subsection (3) is met, shall grant a licence to provide to a person connected with Cote d'Ivoire assistance related to military activities.";
- (c) consider amending section 10(2) of Part 3 as "On application, the Chief Executive, if satisfied that any of the requirements in subsection (4) is met, shall grant a licence to provide to a person connected with Cote d'Ivoire training related to military activities.";
- (d) consider stipulating the application procedures for licences (who should apply, to whom and how to apply) in the Regulation to enhance transparency;
- (e) review the phrase "does not have effect" in section 13(1) to reflect more clearly the intended purpose that the requirement of a licence did not apply; and consider whether the use of brackets for "being a law substantially corresponding to the relevant provision of this Regulation" in section 13(2) was necessary;
- (f) review and refine the Chinese version of "without limiting" (不局限) and "any of the requirements ... is met" (獲符合) in the Regulation; and
- (g) improve the Chinese version of section 32(1).

5. The Subcommittee completed the study of both the English and the Chinese versions of the United Nations Sanctions (Cote d'Ivoire) (No. 2) Regulation 2008, and the English version of the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2009.

III. Any other business

Date of next meeting

6. Members agreed that the next meeting would be held on Monday, 27 April 2009 at 11:00 am.
7. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
12 May 2009

**Proceedings of the third meeting of
the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions
on Tuesday, 31 March 2009 at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000359	Chairman	Opening remarks by the Chairman Confirmation of minutes of the meeting held on 24 February 2008 (LC Paper CB(1)1109/08-09)	
000400 – 001111	Chairman Ms Cyd HO Mr LAU Kong-wah Administration	<u>Meeting with the Administration</u> Administration's response to issues raised at last meeting held on 24 February 2008: (a) in addition to notices promulgating new legislation or changes to legislation and a link to the relevant legislation posted on the Trade and Industry Department (TID)'s website, CEBD would continue to liaise with TID to establish routine channels (such as through newsletter, regular meetings with industry bodies) to disseminate information on UNSC resolutions in relation to sanctions to respective trade and industry as early as possible; and (b) CEBD would liaise with the CI Panel to establish a routine practice for briefing the Panel in future on the implications of the implementation of UNSC resolutions on businesses in Hong Kong.	The Administration to follow up as stated in paragraph 3 of the minutes.
001112 – 011629	Chairman Ms Cyd HO Assistant Legal Adviser (ALA) Administration	<u>Study of the United Nations Sanctions (Cote d'Ivoire)(No.2) Regulation 2008 (CB(1)546/08-09(01))</u> (a) Members noted that the application procedures for licences (who should apply, to whom and how to apply) were not specified in the regulation. The Administration's explanation that anyone who wished to provide funds and weapons to places under sanction should apply to the Chief Executive for a licence. The Administration would liaise with TID to provide information on application procedures to the trade. (b) Members noted that while sections 9 and 10 had provided for the supply of prohibited	The Administration to follow up as stated in paragraph 4 of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>goods/technical assistance and training intended solely for humanitarian or protective use, and for the personal use by certain specified personnel/humanitarian set-ups, no similar provision had been made under section 11 in respect of making available funds, or other financial assets or economic resources.</p> <p>The Administration's explanation that the amendments followed the wording of the UNSC resolutions and were intended to reflect the requirements of the UNSC resolutions. While sections 9 and 10 specified purposes of use by designated third parties, section 11 gave the individual member country (the Chief Executive in the case of Hong Kong) the power to determine whether the funds or other financial assets or economic resources sought to be made available to a relevant person / entity would qualify as basic expenses necessary for the items specified.</p> <p>(c) Members' view that given the great investigation and enforcement powers of authorized officer provided for under the Regulation and the possible economic loss to the owners of goods seized or detained, publicity prior to the enactment of the Regulation was important.</p> <p>The Administration's explanation that the powers, which were subject to judicial review, would be exercised only when there were reasonable grounds for suspecting a contravention of the Regulation.</p> <p>(d) Ms Cyd HO's enquiry about procedures for returning documents, cargoes or articles detained or seized to owners upon the completion of investigations and proceedings.</p> <p>The Administration's explanation that the items detained or seized would be returned in accordance with the established administrative procedures of the Customs and Excise Department.</p> <p>(e) Members noted that the amendment to section 32 on "Exercise of powers of Chief Executive" would be adopted in other Regulations.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(f) Examination of the Chinese version of the Regulation. ALA advised that the legal and drafting aspects of the Chinese version of the Regulation were in order.</p>	
011630 – 012559	Chairman Ms Cyd HO Miss Tanya CHAN Administration	<p><u>The Administration's briefing on the background of the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2009 gazetted on 13 March 2009 and came into effect on the same day. (CB(1)1060/08-09(01))</u></p> <p>(a) Members noted the gap of three months between the passing of the UNSC Resolution 1857 in December 2008 and the gazettal of the Regulation in March 2009.</p> <p>The Administration's explanation that more time was required to complete the making of a regulation around year end and beginning of the year due to the intervening holidays. In the present case, MFA instructions were only received in January 2009. The usual timeframe was to complete the making of a regulation within 10 weeks upon receipt of MFA's instruction.</p> <p>(b) Ms Cyd HO's enquiry whether the prohibitions provided for under the Regulation was applicable to goods that originated from the People's Republic of China transiting Hong Kong.</p> <p>The Administration's advice that there was no exemption from the prohibitions.</p>	
012600 - 013734	Chairman Miss Tanya CHAN Administration	<p><u>The Administration's briefing on the background of the United Nations Sanctions (Liberia) Regulation 2009 and United Nations Sanctions (Liberia) Regulation 2008 (Repeal) Regulation gazetted on 13 March 2009. (CB(1)1159/08-09(01))</u></p> <p>In response to Miss Tanya CHAN's enquiry about the time gap in the commencement of the Regulation 2009 and the Repeal Regulation, the Administration's explanation as follows:</p> <p>(a) all provisions in the United Nations Sanctions (Liberia) Regulation 2008 (Cap. 537AI), except those related to financial sanctions, expired on 19 December 2008;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) consequential to the making of Regulation 2009, which would include provisions relating to financial sanctions, there was no further need for Cap. 573AI, which should therefore be repealed;</p> <p>(c) after the repeal of Cap.537AI, the current list of relevant persons or relevant entities as specified by the CE for the purposes of the financial sanctions provisions would expire. A new list could only be gazetted pursuant to section 31 of the Regulation after the Regulation had come into effect;</p> <p>(d) to ensure that there was no time-gap, the Repeal Regulation and the provisions of the Regulation relating to financial sanctions were brought into effect on 20 March 2009, i.e. one week after the Regulation (except the provisions that related to financial sanctions) came into effect on 13 March 2009.</p>	
013735 – 015024	Chairman Miss Tanya CHAN Administration	<p><u>Study of the mark-up version of the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2009 (CB(1)1162/08-09(01)).</u></p> <p>Members noted that:</p> <p>(a) the amendments were similar to those in the United Nations Sanctions (Cote d'Ivoire) (No. 2) Regulation 2008;</p> <p>(b) where appropriate, "shall" would be replaced by "must" in future drafting of legislation; and</p> <p>(c) "Exceptions to prohibition against entry or transit by certain persons" under section 7(c) and (d) was pursuant to paragraph 10 of Resolution 1807.</p>	
015025– 015122	Chairman	Meeting arrangement	