

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of the sixth meeting
held on Friday, 29 January 2010 at 10:45 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

**Public Officers
attending** : Agenda item I

Ms Linda LAI Wai-ming, 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)

Mr Peter WONG Hing-hong
Principal Government Counsel
Department of Justice

Ms Francoise LAM See-man
Senior Government Counsel
Department of Justice

Ms Lonnie NG Wah-chi
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. Meeting with the Administration

(LC Paper No. CB(1)903/09-10(01) -- Administration's paper on United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2010

LC Paper No. LS36/09-10 -- Report on subsidiary legislation gazetted on 15 January 2010 to the House Committee meeting on 22 January 2010

LC Paper No. CB(1)1022/09-10(01) -- Letter from Assistant Legal Adviser to the Administration dated 27 January 2010)

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

2. The Subcommittee completed the study of Parts 1 to 5 and Parts 7 to 8 of the mark-up English version of the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2010 (the Amendment Regulation).

Admin 3. The Administration undertook to provide:

(a) a written explanation on the rationale and basis for introducing the new measure of empowering a magistrate or judge to make order for forfeiture and disposal of seized items on application by an authorized officer, and provided for procedures for the owner (or authorized agent of the owner) of the seized items to object to the proposed forfeiture under the new sections 24A and 24B (as added by section 26 of the Amendment Regulation);

(b) details of the sanctions against the DPRK pursuant to the instructions from the Ministry of Foreign Affairs (MFA) of the People's Republic of China in June, July and August 2009 which requested the HKSAR

Government to implement Resolution 1874 and decisions made by the Committee established under paragraph 12 of Resolution 1718 of the Security Council of the United Nations (UNSC); and

- (c) the list of persons or entities designated by the Committee or the UNSC under Resolution 1718 as specified by the Chief Executive (CE) by notice in the Gazette in accordance with section 31 of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE) as amended by the Amendment Regulation.

II. Any other business

Date of next meeting

4. The subcommittee agreed that the next meeting would be held on 26 February 2010 at 10:45 am to study Part 6 (i.e. sections 24, 24A, 24B and 25) of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE) as amended by the Amendment Regulation.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the next meeting was rescheduled to 5 March 2010 at 10:45 am in Conference Room B of the Legislative Council Building).

5. There being no other business, the meeting ended at 12:10 pm.

Council Business Division 1
Legislative Council Secretariat
24 February 2010

**Proceedings of the sixth meeting of
the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions
on Friday, 29 January 2010 at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000220 – 000508	Chairman	Opening remarks by the Chairman	
000509 – 001354	Chairman Administration	<p>Meeting with the Administration</p> <p><u>Briefing by the Administration</u> (LC Paper No. CB(1)903/09-10(01)) on:</p> <p>(a) the background of the making of the Amendment Regulation to implement UNSC Resolution 1874 (adopted on 12 June 2009) and decisions made by the Committee established under paragraph 12 of UNSC Resolution 1718 (adopted on 14 October 2006) in relation to sanctions against the Democratic People's Republic of Korea (DPRK);</p> <p>(b) the main provisions of the Amendment Regulation; and</p> <p>(c) the bilateral trade relation between Hong Kong and the DPRK.</p>	
001355 – 004543	Chairman Administration Ms Cyd HO Mr LAU Kong-wah Assistant Legal Adviser (ALA)	<p><u>Briefing by the Assistant Legal Adviser on the letter dated 27 January 2010 to the Administration</u> (LC Paper No. CB(1)1022/09-10(01))</p> <p>Briefing by the Administration and discussion on the rationale and basis for introducing the new measure of empowering a magistrate or judge to make order for forfeiture and disposal of seized items on application by an authorized officer, and provided for procedures for the owner (or authorized agent of the owner) of the seized items to object to the proposed forfeiture under the new sections 24A and 24B, with reference to paragraph 14 of UNSC Resolution 1874; the United Nations Sanctions Ordinance (Cap. 537); on the applicability of section 102 of the Criminal Procedure Ordinance (Cap. 221) on disposal of property; and section 27 of the Import and Export Ordinance (Cap. 60) on forfeiture to implement UNSC Resolution 1874.</p> <p>The Chairman and Ms Cyd HO were of the view that the new sections 24A and 24B made under section 26 of the</p>	The Administration to take follow-up action as stated in paragraph 3(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>Amendment Regulation purported to have serious penal effect and confer vast enforcement power. The provisions of such a nature should be subject to vetting by the legislature. Concern was raised as to whether such provisions were ultra vires of the primary legislation.</p> <p>Noting that the new section 24A had provided for the owner (or authorized agent of the owner) of the seized items to object to the proposed forfeiture, the Chairman and Ms Cyd HO expressed concern that the forfeiture provision was not provided for under the principal Ordinance. Ms Cyd HO was of the view that the proper way of conduct was to seek to amend the principal Ordinance first.</p>	
004544 – 012453	Chairman Administration Ms Cyd HO	<p><u>Study of the mark-up English version of the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2010</u> (LC Paper No. CB(1)903/09-10(01))</p> <p>Discussion on the document issued by the Chief Secretary for Administration pursuant to the MFA's instructions in June, July and August 2009 in relation to sanctions against the DPRK (Annex B to LC Paper No. CB(1)903/09-10(01)).</p> <p><u>Section 1. Interpretation</u></p> <p>Discussion on the use of "materiel" under "specified item" of section 1 of Part 1.</p> <p><u>Section 3A. Exceptions to prohibitions under sections 2 and 3</u></p> <p>In response to Ms Cyd HO's enquiry, the Administration explained that the procedures on exceptions to prohibitions under sections 2 and 3 involved notifying the CE (at least 30 days before the day on which the act was intended to be performed) in writing prior to selling, supplying or transferring small arms or light weapons to the DPRK, and the CE would cause the Committee to be notified at least 5 days before the day on which the act was intended to be performed. The timeline was in line with international practices such as Canada.</p> <p><u>Section 5. Prohibition against procurement of certain items or services using ships, aircraft or vehicles</u></p> <p>Discussion on the use of the Chinese equivalent of</p>	The Administration to take follow-up action as stated in paragraph 3(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>"advice" (意見) in section 5 of Part 2 with reference to paragraph 9 of the Chinese version of UNSC Resolution 1874.</p> <p><u>Paragraph 8(e) of Resolution 1718: Member states to prohibit the entry into or transit through their territories by persons designated by the Committee or by the UNSC</u></p> <p>Ms Cyd HO referred to media reports about the presence of family members of leaders of the DPRK in Macau and expressed concern about the enforcement of the prohibition.</p> <p>The Administration advised that banks, financial institutions and the Immigration Department were notified of the list of relevant persons and entities designated by the Committee or the UNSC under Resolution 1718 as specified by the CE by notice in the Gazette .</p>	<p>The Administration to take follow-up action as stated in paragraph 3(c) of the minutes.</p>
012454 – 012601	Chairman	Meeting arrangement	