

立法會
Legislative Council

LC Paper No. CB(1)1213/16-17
(These minutes have been seen
by the Administration)

Ref : CB1/HS/1/16

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

**Minutes of second meeting on
Thursday, 23 February 2017, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon Martin LIAO Cheung-kong, SBS, JP
Hon Holden CHOW Ho-ding

Members absent : Hon Dennis KWOK Wing-hang
Hon Tanya CHAN

Public officers attending : Agenda item I

Ms Vivian SUM, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry) 1

Ms Leona LAW
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry) 2

Miss Elaine NG
Senior Government Counsel

Mr Gary LI
Government Counsel

Mr David NG
Government Counsel (Treaties and Law)

Clerk in attendance: Mr Desmond LAM
Chief Council Secretary (1)3

Staff in attendance: Mr Bonny LOO
Assistant Legal Adviser 4

Miss Joyce CHAN
Assistant Legal Adviser 1

Mr Joey LO
Senior Council Secretary (1)8

Ms May LEUNG
Legislative Assistant (1)3

Miss Zoe YIP
Clerical Assistant (1)3

Action

I. Meeting with the Administration

- (File Ref: CITB CR 67/53/1 -- Legislative Council Brief on United Nations Sanctions (Iran) Regulation (Repeal) Regulation and United Nations Sanctions (Joint Comprehensive Plan of Action — Iran) Regulation
- LC Paper No. LS12/16-17 -- Legal Service Division Report on subsidiary legislation gazetted on 25 November 2016 (L.N. 177 and L.N. 178) for the House Committee meeting on 2 December 2016
- File Ref: CITB CR 102/53/1 -- Legislative Council Brief on United Nations Sanctions (Somalia) (Amendment) Regulation 2017

LC Paper No. LS28/16-17 -- Legal Service Division Report on subsidiary legislation gazetted on 27 January 2017 (L.N. 15) for the House Committee meeting on 3 February 2017)

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

2. The Subcommittee completed the study of the United Nations Sanctions (Iran) Regulation (Repeal) Regulation (which repealed the United Nations Sanctions (Iran) Regulation (Cap. 537AF)), the United Nations Sanctions (Joint Comprehensive Plan of Action—Iran) Regulation ("the JCPOA—Iran Regulation"), and the United Nations Sanctions (Somalia) (Amendment) Regulation 2017.

Follow-up actions

3. In relation to the JCPOA—Iran Regulation, the Administration was requested to inform the Subcommittee –

(a) whether the "nuclear-related items" (defined as items, materials, equipment, goods or technologies set out in the International Atomic Energy Agency documents INFCIRC/254/Rev.12/Part1 and INFCIRC/254/Rev.9/Part 2) included:

- (i) items which were solely for military-related uses (such as development of nuclear weapons);
- (ii) dual-use items which could be used for both military and peaceful purposes; or
- (iii) items which could only be used for peaceful purposes (such as electricity generation) with no potential military applications,

and to provide a brief summary of the "nuclear-related items" and the hyperlink to the said documents; and

(b) of the legal provisions applicable to the forfeiture and disposal of articles seized under the JCPOA—Iran Regulation, given that the JCPOA—Iran Regulation did not contain provisions in relation to forfeiture and disposal of seized articles similar to sections

24A and 24B of the now repealed Cap. 537AF.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)897/16-17(01) on 2 May 2017.)

II. Any other business

4. There being no other business, the meeting ended at 3:54 pm.

Council Business Division 1
Legislative Council Secretariat
27 June 2017

**Proceedings of the second meeting of
the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions
on Thursday, 23 February 2017, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000236	Chairman	Opening remarks by the Chairman	
000237 – 000711	Chairman Administration	<p><u>Briefing by the Administration on the United Nations Sanctions (Iran) Regulation (Repeal) Regulation ("the Repeal Regulation") and the United Nations Sanctions (Joint Comprehensive Plan of Action—Iran) Regulation ("the JCPOA—Iran Regulation")</u></p> <p>The Administration introduced the Repeal Regulation which repealed the United Nations Sanctions (Iran) Regulation (Cap. 537AF) to implement the decision of the United Nations Security Council ("UNSC") to terminate various previous resolutions referred to in paragraph 7(a) of Resolution 2231 (2015) ("UNSCR 2231") as adopted by UNSC on 20 July 2015.</p> <p>The Administration introduced the JCPOA—Iran Regulation which implemented certain restrictions related to Iran established by Annex B to UNSCR 2231 by prohibiting, inter alia, the supply, sale, transfer and carriage of conventional arms, nuclear-related items or ballistic missile-related items to Iran.</p>	
000712 – 000854	Chairman Mr Martin LIAO Mr Holden CHOW	Discussion on whether the Chinese text or the English text of the marked-up version was to be used for the section-by-section examination of the JCPOA—Iran Regulation.	
000855 – 001318	Chairman Assistant Legal Adviser ("ALA4") Administration	<p><u>Section-by-section examination of the Chinese text of the marked-up version of the JCPOA—Iran Regulation (Annex E to CITB CR 67/53/1)</u></p> <p><u>Part 1 : Preliminary</u> <u>Section 1 – Interpretation</u></p> <p>ALA4 pointed out that although the Chinese term for "attack helicopter" in the Chinese version of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the JCPOA—Iran Regulation had been amended from "攻擊直昇機" to "攻擊直升機", no corresponding amendment was made to its English version, which retained the expression "攻擊直昇機" in the definition of "attack helicopter".</p> <p>The Administration advised that the discrepancy between the Chinese and English versions in the use of the Chinese characters "昇" and "升" would not compromise the legal effect of the provision. The Administration would make corresponding amendment to the English version as raised by ALA4 when amending the JCPOA — Iran Regulation next time.</p>	
001319 – 001515	Chairman Administration	<p><u>Part 2: Prohibitions</u> <u>Section 2 – Prohibition against supply, sale or transfer of certain items to Iran</u></p> <p>In response to the Chairman's enquiry, the Administration advised that other than items, materials, equipment, goods and technology related to nuclear activities and ballistic missiles, as well as arms or related materiel, normal and legitimate trade of other products and services between Hong Kong and Iran was not prohibited.</p>	
001516– 001840	Chairman Mr Martin LIAO Administration	<p><u>Part 1 : Preliminary</u> <u>Section 1 – Interpretation</u></p> <p>In response to Mr Martin LIAO's enquiry about the definition and the scope of "nuclear-related item", the Administration advised that nuclear-related item included dual-use items that could be used for both military and peaceful purposes. At the request of the Chairman, the Administration undertook to provide a summary of the item, material, equipment, goods or technology set out in the International Atomic Energy Agency ("IAEA") document INFCIRC/254/Rev. 12/Part 1 or IAEA document INFCIRC/254/Rev. 9/Part 2 and the hyperlink to the said documents.</p>	The Administration to take follow-up action as required in paragraph 3(a) of the minutes.
001841 002044	Chairman Administration	<p><u>Part 2: Prohibitions</u> <u>Section 3 – Prohibition against carriage of certain items to Iran</u> <u>Section 4 – Prohibition against supply, sale or transfer of certain items from Iran</u></p>	

Time marker	Speaker	Subject(s)	Action required
		Members raised no question.	
002045 – 002846	Chairman Mr Holden CHOW Administration ALA4	<p><u>Section 5 – Prohibition against carriage of certain items from Iran</u></p> <p>In response to the Chairman's enquiry about the granting of licences under section 5(2), the Administration advised that except under the authority of a licence granted by the Chief Executive under section 14(1)(b), a ship, aircraft or vehicle should not be used for the carriage of any arms or related materiel or ballistic missile-related item(s) if the carriage was, or formed part of, a carriage from Iran. Under section 14(1)(b) and (2), the supply, sale, transfer or carriage of such items should be approved in advance on a case-by-case basis by the UNSC.</p> <p>In response to Mr Holden CHOW's enquiry on whether the prohibition against carriage of certain items from Iran could be circumvented if such items were not carried directly from Iran but via first a third country en route to Hong Kong, the Administration advised that such circumvention would not be possible because the prohibition under section 5 also applied to carriages which formed "part of" a carriage from Iran.</p>	
002847 – 003121	Chairman Administration	<p><u>Part 2: Prohibitions</u></p> <p><u>Section 6 – Prohibition against provision of certain training, services or assistance related to conventional arms</u></p> <p><u>Section 7 – Prohibition against provision or transfer of certain assistance, training, services or resources related to nuclear-related items</u></p> <p>Members raised no question.</p>	
003122 – 003424	Chairman Administration	<p><u>Part 2: Prohibitions</u></p> <p><u>Section 8 – Prohibition against provision or transfer of certain technology, assistance, training, services or resources related to ballistic missiles</u></p> <p>In response to the Chairman's query about the reasons why subsections (4) and (5) which contained almost identical provisions were not merged to avoid repetition, the Administration</p>	

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		<p>advised that subsections (4) and (5) were drafted as two separate subsections to differentiate the offences so that a person who contravened subsection (2) would commit an offence under subsection (4), whereas a person who contravened subsection (3) would commit an offence under subsection (5).</p> <p>The Chairman's enquiry and the Administration's response in relation to the sentencing policy in the event of contravention of both subsections (2) and (3).</p>	
003425 – 003532	Chairman Administration	<p><u>Part 2: Prohibitions</u> <u>Section 9 – Prohibition against making available funds, etc. or dealing with funds, etc.</u></p> <p>Members raised no question.</p>	
003533 – 003656	Chairman Administration	<p><u>Part 2: Prohibitions</u> <u>Section 10 – Prohibition against sale and acquisition of interest in ballistic missile commercial activity or uranium commercial activity</u></p> <p>In response to the Chairman's enquiry, the Administration advised that UNSCR 2231 did not impose restrictions on the sale and acquisition of interest in commercial activity involving radioactive substances other than uranium, such as plutonium.</p>	
003657 – 003754	Chairman Administration	<p><u>Part 2: Prohibitions</u> <u>Section 11 – Prohibition against entry or transit by certain persons</u></p> <p>In response to the Chairman's enquiry, the Administration advised that the meaning of "specified person" was defined under section 11(4).</p>	
003755 – 004040	Chairman Mr Holden CHOW Administration	<p><u>Part 2: Prohibitions</u> <u>Section 12 – Exceptions to prohibition against entry or transit by certain persons</u></p> <p>In response to Mr Holden CHOW's enquiry, the Administration advised that the JCPOA—Iran Regulation did not impose prohibition on the supply, sale, transfer or carriage of conventional</p>	

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		<p>arms, nuclear-related items or ballistic missile-related items to countries other than Iran, although similar prohibitions relating to other countries might be covered by other regulations made under the United Nations Sanctions Ordinance (Cap. 537).</p>	
004041 – 004254	Chairman Administration	<p><u>Part 3: Licences</u> <u>Section 13 – Licence for supply, sale, transfer or carriage of certain items to Iran</u> <u>Subsection (1) – Subsection (5)</u></p> <p>Members raised no question.</p>	
004255 – 004344	Chairman Administration	<p><u>Part 3: Licences</u> <u>Section 13 – Licence for supply, sale, transfer or carriage of certain items to Iran</u> <u>Subsection (6)</u></p> <p>In response to the Chairman's enquiry, the Administration advised that the Chief Executive would, through the responsible person from the Ministry of Foreign Affairs of the People's Republic of China, cause the UNSC and the Joint Commission established under the JCPOA to be notified of the intention to grant the licence for supply, sale, transfer or carriage of certain items to Iran.</p>	
004345 – 004824	Chairman Administration	<p><u>Part 3: Licences</u> <u>Section 14 – Licence for supply, sale, transfer or carriage of certain items from Iran</u></p> <p><u>Section 15 – Licence for provision of certain training, services or assistance related to conventional arms</u></p> <p><u>Section 16 – Licence for provision or transfer of certain assistance, training, services or resources related to nuclear-related items</u></p> <p><u>Section 17 – Licence for provision or transfer of certain technology, assistance, training, services or resources related to ballistic missiles</u></p> <p><u>Section 18 – Licence for making available funds, etc. to certain persons or entities or dealing with funds, etc. of certain persons or entities</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Section 19 – Licence for sale and acquisition of interest in ballistic missile commercial activity or uranium commercial activity</u></p> <p>Members raised no question.</p>	
004825 – 004857	Chairman Administration	<p><u>Part 4: Things done outside HKSAR</u> <u>Part 5: Enforcement of Regulation</u></p> <p>Members raised no question.</p>	
004858 – 005340	Chairman Mr Martin LIAO Administration	<p><u>Part 6: Evidence</u> <u>Section 32 – Power of magistrate or judge to grant warrant</u></p> <p>In response to the Chairman's and Mr Martin LIAO's enquiry as to the applicable legal principles and procedures under the laws of Hong Kong with respect to the forfeiture and disposal of articles seized under the JCPOA—Iran Regulation, in light of the fact that the JCPOA—Iran Regulation did not contain provisions in relation to forfeiture and disposal of seized articles similar to sections 24A and 24B of the now repealed United Nations Sanctions (Iran) Regulation (Cap. 537AF), the Administration advised that the Criminal Procedure Ordinance (Cap. 221) provided for the relevant provisions that would be applicable to the forfeiture and disposal of articles seized under the JCPOA—Iran Regulation .</p> <p>Mr Martin LIAO doubted the applicability of the Criminal Procedure Ordinance (Cap. 221) on articles seized under the JCPOA—Iran Regulation. The Chairman requested the Administration to provide a written response to clarify the issue raised by Mr LIAO.</p>	The Administration to take follow-up action as required in paragraph 3(b) of the minutes.
005341 – 005506	Chairman Administration	<p><u>Part 7: Disclosure of Information or Documents</u> <u>Part 8: Other Offences and Miscellaneous Matters</u></p> <p>Members raised no question.</p>	
005507 – 005850	Chairman Mr Martin LIAO ALA4 Administration	The Chairman and Mr Martin LIAO elaborated on members' request for information regarding "nuclear-related items" set out in IAEA documents INFCIRC/254/Rev.12/Part 1 and INFCIRC/254/Rev.9/Part 2, and other legal	The Administration to take follow-up action as

Time marker	Speaker	Subject(s)	Action required
		<p>provisions applicable to the forfeiture and disposal of articles seized under the JCPOA—Iran Regulation.</p> <p>In response to the Chairman's enquiry, ALA4 advised that other than the minor issue with the Chinese rendition of "attack helicopter" discussed above, no legal or drafting difficulties were identified in respect of the JCPOA—Iran Regulation.</p> <p>Members completed the study of the JCPOA—Iran Regulation and raised no objection to the Regulation.</p>	<p>required in paragraph 3(a) and (b) of the minutes.</p>
005851 – 010147	Chairman Administration	<p><u>Briefing by the Administration on the United Nations Sanctions (Somalia) (Amendment) Regulation 2017 ("the Amendment Regulation")</u></p> <p>The Administration introduced the Amendment Regulation which implemented certain exceptions to arms-related measures and financial sanctions against Somalia as renewed by UNSCR 2317.</p>	
010148 – 010505	Chairman Administration	<p><u>Section-by-section examination of the Chinese text of the marked-up version of the Amendment Regulation (Annex D to CITB CR 102/53/1)</u></p> <p><u>Part 1: Preliminary</u> <u>Part 2: Prohibitions</u> <u>Part 3: Licences</u> <u>Part 4: Things Done outside HKSAR</u> <u>Part 5: Enforcement of Regulation</u> <u>Part 6: Evidence</u> <u>Part 7: Disclosure of Information or Documents</u> <u>Part 8: Other Offences and Miscellaneous Matters</u></p> <p>Members raised no question.</p> <p>Members completed the study of the Amendment Regulation and raised no objection to the Regulation.</p>	
010506 – 010554	Chairman	End of meeting.	