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

Background brief

Purpose

This paper provides background on the provisions and mechanism for implementing in Hong Kong resolutions of the Security Council of the United Nations ("UNSC") in relation to sanctions, and summarizes the concerns raised by the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("the Subcommittee") during the study of regulations made under the United Nations Sanctions Ordinance (Cap. 537) ("UNSO") in the Fifth Legislative Council ("LegCo").

Background

2. Prior to 1 July 1997, resolutions of UNSC in relation to sanctions were implemented in Hong Kong by way of Orders in Council which were made by the United Kingdom Government and extended to Hong Kong. All such Orders in Council as applicable to Hong Kong lapsed at midnight on 30 June 1997. To put in place a mechanism to ensure the continued application and enforcement of UNSC resolutions in relation to sanctions in the Hong Kong Special Administrative Region ("HKSAR"), UNSO was passed by the Provisional Legislative Council on 16 July 1997 and came into effect on 18 July 1997.

3. Under the current mechanism, when UNSC makes a resolution regarding sanctions and calls on Member States including the People's Republic of China ("PRC") to enforce those sanctions, the Ministry of Foreign Affairs ("MFA") may issue an instruction to the Chief Executive ("CE") to implement the sanctions specified in the resolution. Pursuant to section 3(1) of UNSO, CE shall make regulations to give effect to the MFA's instructions to implement UNSC resolutions ("UNSCRs"). These regulations may, under section 3(3) of UNSO,

prescribe that a contravention or breach thereof is an offence.¹

4. Section 3(5) of UNSO provides that sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap.1) shall not apply to regulations made under UNSO. These regulations are therefore not required to be laid before LegCo and are not subject to approval or amendment by LegCo.

5. In the Third, the Fourth and the Fifth LegCo, a subcommittee was appointed by the House Committee ("HC") in October 2004, December 2008 and October 2012 respectively to consider regulations made under UNSO for implementing in HKSAR UNSCRs in relation to sanctions. Regulations made and gazetted under UNSO would be considered by Members at HC meetings and referred to the dedicated subcommittee for study.

Issues of concern raised by the Subcommittee formed in 2012

Administrative issues

Provision of information to facilitate study of the regulations

6. At the request of the Subcommittee, the Administration had been providing background information on the regulations made under UNSO pursuant to the relevant UNSCRs, trade relations between HKSAR and the countries under sanctions as well as the implications of the sanctions on the economy of HKSAR by way of a LegCo Brief. Marked-up versions of the regulations showing amendments made to the existing regulations were provided to assist members in conducting section-by-section examination of the regulations. In the case where a new regulation was made to renew or continue the implementation of sanctions imposed on a country, and where the existing regulation had expired or had been repealed, the Administration, at the Chairman's request, had provided the Subcommittee with information on the key differences between the new regulation and the existing one to facilitate the Subcommittee's study of the regulations.

Disclosures by the Government

7. Noting that regulations made under UNSO contained sections that permitted the disclosure of evidence, information, or other materials to

¹ Regulations made under section 3 of UNSO may prescribe that a contravention or breach thereof shall be punishable –

- (a) on summary conviction by a fine not exceeding \$500,000 and imprisonment for a term not exceeding 2 years;
- (b) on conviction on indictment by an unlimited fine and imprisonment for a term not exceeding 7 years.

governments and/or relevant authorities of any place outside HKSAR on the authority of CE, some members expressed concern that such disclosure might well have the direct or indirect effect of inviting surveillance activities in HKSAR, and enquired about the number of such requests made by governments of other countries, the frequency of such disclosure as well as the nature and purpose of the information sought and disclosed.

8. The Administration explained that under the disclosure provisions in the regulations made under UNSO, any information or document provided, produced or seized under the respective regulations might be disclosed if, *inter alia*, the information or document was disclosed on the authority of CE, subject to the information or document being transmitted through and with the approval of MFA to, *inter alia*, the government of any place outside the PRC for the purpose of assisting that government in securing compliance with or detecting evasion of measures in relation to the places under UNSC sanction. The Administration advised in August 2013 that according to its records for the past five years, no such disclosure had been made.

Dissemination of information in relation to sanctions

9. The Subcommittee was keen to ensure timely dissemination of information in relation to UNSCRs to the concerned trades, such as the financial and accounting sectors, the tourism, export/import and logistic sectors, which would be affected by the financial sanctions, travel bans on specified persons, prohibition on the supply or transfer of specified goods, etc. The Subcommittee considered that members of the Panel on Commerce and Industry and the Panel on Financial Affairs should be notified of the UN sanctions being implemented in HKSAR by way of regulations made under UNSO. In this connection, Subcommittee members were informed that the LegCo Secretariat had, according to usual practice, assisted in circulating the relevant LegCo Briefs to all LegCo Members for information.

10. The Administration advised that under the prevailing arrangements, the Commerce and Economic Development Bureau ("CEDB"), upon gazettal of regulations that implemented UN sanctions against certain places, would issue press release and notify the concerned bureaux/departments, including the Trade and Industry Department and the Hong Kong Monetary Authority, which would then notify stakeholders under their purviews, such as financial regulators, relevant trade associations, the industry and trade sector, the logistics and tourism sectors, etc. as appropriate, by issuing notices or circulars. According to the Administration, the notification arrangement effectively ensured timely dissemination of information for the implementation of regulations made under UNSO.

11. During the study of the United Nations Sanctions (Democratic People's

Republic of Korea) (Amendment) Regulation 2014 in relation to the prohibition against the carriage and supply of luxury goods to a place in the Democratic People's Republic of Korea ("DPRK"), the Subcommittee considered that, in addition to notifying the concerned trades in the tourism, import/export and logistic sectors, the Administration should inform the academic sector of the prohibition in view that some universities had organized study tours to DPRK in the past and might continue to organize such activities in future.

12. According to the Administration, assistance of the Travel Industry Council of Hong Kong had been enlisted in notifying travel agencies organizing tours to DPRK and the concerned travellers of the relevant prohibition. Intermediaries through which universities arranged study tours to DPRK were among the Administration's targets of notification. The Customs and Excise Department had also reminded business operators engaging in import, export and logistic businesses in connection with DPRK of the prohibition.

13. In the course of the study of the United Nations Sanctions (Central African Republic) Regulation, the Subcommittee considered that the Administration should promulgate the list of specified persons prohibited from entry into and transit through HKSAR in the websites of relevant Government bureaux/departments to disseminate the information to the public and the trades concerned.

14. The Administration advised that the list of specified persons subject to travel ban as designated by the relevant sanctions committees established pursuant to the relevant UNSCRs was open to the public and was available on the UN's website. Such information was normally not provided in the relevant local legislation. At the request of the Subcommittee, the Administration had created a new webpage under the website for the Commerce, Industry and Tourism Branch of CEDB to disseminate to the public the list of specified persons prohibited from entry into or transit through HKSAR as stipulated by UNSC in relation to sanctions that were implemented in HKSAR.

15. During the study of the United Nations Sanctions (Côte d'Ivoire) Regulation 2014, the Administration agreed that, apart from making available a list of specified goods referred to in the Regulation and any amendments to the list for public inspection free of charge at the Office of the Director-General of Trade and Industry during normal office hours, such information would also be provided on the Internet.

Timeliness of the regulations made under UNSO

16. While appreciating the improvements made by the Administration in reducing the time gap between the receipt of the MFA's instructions and the gazettal of the relevant regulations to around three months in most cases, some

members noted with concern the relatively long time gap between the receipt of the MFA's instructions and the gazettal of the relevant regulation to implement the sanctions in HKSAR as in the case of the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2014.² The Subcommittee considered such a situation undesirable and urged the Administration to take every possible step to expedite the legislative process to shorten the time gap.

17. The Administration explained that there would be a necessary lead time between the receipt of MFA's instructions and the gazettal of the related regulations and the Administration had been striving to shorten the time gap. The Administration assured members that it would continue to work closely with MFA to ensure timely implementation of the MFA's instructions in relation to UN sanctions in HKSAR and would endeavour to expedite the process through more streamlined arrangements and deploy dedicated officers in the Department of Justice ("DoJ") to deal with the subject. To facilitate drafting work, reference would be made to statutory provisions in similar regulations as far as possible.

Drafting issues and suggestions for improvements

Model law approach

18. The Subcommittee noted that while different sanction measures, targets and subjects of the sanctions might be formulated for different countries or places to implement the relevant UNSCRs, the drafting approach adopted in most of the regulations made under UNSO was broadly similar. The Subcommittee concurred with the previous Subcommittees' view that the use of a model law approach (or developing different models for different scenarios) was conducive to improving efficiency in the Administration's preparation and the Subcommittee's study of the regulations. The Subcommittee requested the Administration to use the model law approach in preparing the regulations made under UNSO.

19. The Administration advised that while a model law approach could serve as a useful reference, the specific details of sanction measures might differ in different UNSCRs. The Administration would make reference to statutory provisions in similar regulations where appropriate.

² For details, please refer to paragraph 45 of the Report of the Subcommittee for the HC meeting on 24 June 2016 ("the Report") in respect of the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2014 (LC Paper No. CB(1)1058/15-16).

Drafting improvements

20. During the study of the United Nations Sanctions (Democratic People's Republic of Korea (Amendment) Regulation 2014 and the United Nations Sanctions (Côte d'Ivoire) Regulation 2014, the Subcommittee enquired about the rationale for the use of the new phrase "*belonging to, or owned or controlled by*" in place of the phrase "owned by or otherwise belonging to, or held by" in the United Nations Sanctions (Democratic People's Republic of Korea (Amendment) Regulation 2013 and the United Nations Sanctions (Côte d'Ivoire) Regulation 2013. The Administration advised that the relevant change aimed to bring the wording in line with what was adopted in the relevant UNSCRs³ and was made with reference to the latest drafting practices of overseas legislation (e.g. The Côte d'Ivoire (Sanctions) (Overseas Territories) Order 2012 of the United Kingdom).

21. While agreeing with the Administration's practice of bringing the wording in local legislation in line with the relevant UNSCRs so as to ensure that the scope of sanctions as implemented by the relevant regulations was in accordance with the concerned resolutions, the Subcommittee expressed concern that the strict adoption of the terminologies used in the relevant UNSCRs in the corresponding regulations made under UNSO might give rise to inconsistencies in the drafting of local legislation. The Subcommittee requested the Administration to furnish the Subcommittee with explanations on any changes in drafting practice and terminologies used to facilitate the Subcommittee's understanding and study of the regulations in future.⁴

22. In the course of the study of the United Nations Sanctions (Eritrea) (Amendment) Regulation 2013, the Subcommittee noted that the Chinese rendition for the term "designated person" had been revised from "指明人士" to "指認人士" with reference to the wording used in the Chinese text of the relevant UNSCR. The Subcommittee expressed concern whether DoJ had sufficient language expertise to maintain the standard and quality of bilingual legislation drafting. The Subcommittee suggested that consideration should be given to the setting up of a panel of advisory language specialists to help ensure that there would be no discrepancies between the English and Chinese defined terms. The issue had been referred to the Panel on Administration of Justice and Legal Services ("AJLS Panel") for consideration to follow up with the Administration. The AJLS Panel, at its meeting held on 21 December 2015, received a briefing

³ Paragraph 8(d) of UNSCR 1718 in respect of the United Nations Sanctions (Democratic People's Republic of Korea (Amendment) Regulation 2014, and paragraph 11 of UNSCR 1572 in respect of the United Nations Sanctions (Côte d'Ivoire) Regulation 2014.

⁴ Examples include the United Nations Sanctions (Democratic People's Republic of Korea (Amendment) Regulation 2014 (paragraphs 46, 48 and 50 of the Report), and the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2014 (paragraph 64 of the Report) (LC Paper No. CB(1)1058/15-16).

from DoJ on the suggestion. DoJ advised that it did not see the need to set up the proposed panel to vet the draft legislation before it was finalized. Nevertheless, DoJ had not ruled out setting up of a panel of external specialists to advise Law Drafting Division counsel on general law drafting issues.

23. Subcommittee members pointed out that there were past cases in which the Securities and Futures Commission ("SFC") used different Chinese renditions for an English term in some technical legislation and documents to facilitate understanding of respective readers in HKSAR, the Mainland and Taiwan. Members suggested that reference could be made to SFC's practice as appropriate such that prevailing Chinese translation of certain terminologies used in the laws of HKSAR could be adopted in regulations made under UNSO to facilitate public understanding of the relevant regulations.

Latest position

24. The Subcommittee submitted a report to HC on 24 June 2016, recommending the setting up of a dedicated subcommittee in the Sixth LegCo to deal with regulations made under section 3 of the UNSO. The Subcommittee also recommended that for regulations which involved minor amendments, such as date of commencement and UNSC resolution numbers, a streamlined approach should be adopted to study the regulations by circulating the information papers provided by the Administration instead of going through the regulations by conducting section-by-section examination at meetings.

25. On 14 October 2016, HC agreed that a dedicated subcommittee should be formed in the Sixth LegCo to consider regulations made under UNSO. The United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2016 gazetted on 30 June 2016 (L.N. 111 of 2016), and the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2016 and the United Nations Sanctions (South Sudan) Regulation 2016 gazetted on 14 October 2016 (L.N. 157 and L.N. 158 of 2016) were referred to the newly formed Subcommittee for consideration.