

Our Ref : CSO/ADM CR 2/5691/98

13 November 2003

The Honourable Miriam Lau Kin-ye, J.P.
Chairman of the House Committee
Legislative Council Building
8 Jackson Road, Central
Hong Kong

**Report of the Subcommittee on United Nations Sanctions
(Afghanistan)(Amendment) Regulation 2002 [the Afghanistan
(Amendment) Regulation] and United Nations Sanctions
(Angola) (Suspension of Operation) Regulation 2002**

Thank you for your letter of 6 October 2003 enclosing the report of the above Subcommittee.

Having examined the report carefully, I would like to respond to the conclusions following their sequence in the Subcommittee Report as below:

- (a) Whether the Afghanistan (Amendment) Regulation is ultra vires - The Administration remains of the view that the making of the Afghanistan (Amendment) Regulation under the United Nations Sanctions Ordinance (Cap. 537) to implement United Nations Security Council Resolution (UNSCR) 1390 is legally in order. UNSCR 1390 extended certain sanctions imposed by two previous UNSCRs, namely UNSCR 1267 and UNSCR 1333. The sanctions under these two earlier UNSCRs were directed towards individuals and

entities designated by the Committee established pursuant to UNSCR 1267 who used Afghanistan as a base for their terrorist activities. The sanctions under UNSCR 1390 are directed against the same individuals and entities. It would be too restrictive to view “place”, in the context of the United Nations Sanctions Ordinance, in isolation from the people who operate there. Sanctions against a “place” will in practice comprehend the activities or conduct of individuals or entities in that place. The Administration is satisfied that the Afghanistan (Amendment) Regulation giving effect to the relevant instruction of the Central People’s Government (CPG) is *intra vires*.

- (b) The use of administrative means - We note the view that it would have been preferable to enact a new regulation to suspend the travel restrictions against senior officials of the National Union for the Total Independence of Angola (UNITA) and their immediate family members under UNSCR 1412, rather than to use administrative means. However, it was practically impossible to introduce new legislation given the very short duration of UNSCR 1412 (the measure was valid for 90 days only). Even if we had proceeded with the drafting of a regulation upon receipt of the CPG’s instruction, UNSCR 1412 would have expired by the time we tabled the draft regulation before the Executive Council when it resumed after the summer recess. We therefore explored what action we could take to implement UNSCR 1412 and decided to adopt the administrative measure of receiving visa applications from Angolans but withholding their processing. This, we believe, has struck the right balance between complying with the United Nations Sanctions (Angola) Regulation, which was then still in force, and implementing UNSCR 1412. Although UNSCR 1412 provided for a suspension of the travel restrictions, it did not derogate the Administration from imposing visa requirements and did not require us to admit senior officials of the UNITA and their immediate family members automatically. It followed that not granting a visa to senior officials of the UNITA and their immediate family members during the period when the United Nations Sanctions (Angola) Regulation was in force would not have constituted a violation of UNSCR 1412.

- (c) Extending the scope of the United Nations Sanctions Ordinance - We are grateful for the suggestion of the Subcommittee and will consider the need to amend and extend the scope of the United Nations Sanctions Ordinance if and when such a need arises in future. The provision for the Chief Executive to make regulations in consultation with the Executive Council allows the Government of the HKSAR (HKSARG) to enact regulations for implementing UNSCRs promptly and effectively. This is necessary as many UNSCRs are time-limited. The present arrangement is, in our view, appropriate.

- (d) Provision of CPG's instructions - Correspondence between CPG and HKSARG, including the instructions from the Ministry of Foreign Affairs (MFA) concerning the implementation of UNSCRs, is intended for internal use only. We consider it inappropriate to release internal correspondence to persons outside the Administration. This is an established practice governing the handling of HKSARG's correspondence with CPG and all other governments. I also wish to assure you that the Administration has truthfully conveyed the content of MFA's instructions to the Subcommittee and therefore Members' ability to assess whether we have complied with CPG's instructions in full has in no way been compromised.

We have given very serious consideration to the Subcommittee's views throughout its five meetings and provided the requested information as far as possible. The issues raised have been thoroughly debated at the Subcommittee and re-examined again by the Administration. Although I regret to say that, having taken our own legal advice, we continue to hold divergent views, we remain nonetheless grateful for the work of the Subcommittee.

(Donald Tsang)
Chief Secretary for Administration

