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Mrs Sharon Tong
Clerk to Subcommittee on
United Nations Sanctions (Liberia) Regulation 2003
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

17 February 2004

Dear Mrs Tong,

**Subcommittee on
United Nations Sanctions (Liberia) Regulation 2003**

This letter sets out our response to the issues raised at the last meeting of the Subcommittee on United Nations Sanctions (Liberia) Regulation 2003 held on 19 January 2004.

Formal document issued by the Chief Secretary for Administration

2. A letter has been issued by the Chief Secretary for Administration on 17 February 2004 to the Chairman of the Subcommittee confirming the instruction given by the Ministry of Foreign Affairs of the People's Republic of China.

Provisions prohibiting entry or transit

3. Members have asked why sections 11 and 12 of the United Nations Sanctions (Liberia) Regulation 2003 ("the Regulation") are needed. Sections 11 and 12 of the Regulation provide that certain persons

connected with Liberia shall not enter or transit through the HKSAR. Such provision is necessary as existing legislation cannot be relied on to fully implement United Nations Security Council (UNSC) Resolution 1478.

4. Paragraph 10 of UNSC Resolution 1478 extends the measures imposed by paragraphs 5 to 7 of UNSC Resolution 1343 which calls for all States to, inter alia, take necessary measures to prevent the entry into or transit through their territories of certain persons connected with Liberia. Section 38 of the Immigration Ordinance (Cap 115) (copy at Annex A) provides that certain persons may not land in Hong Kong, or having landed in Hong Kong unlawfully, remain in Hong Kong without the authority of the Director of Immigration. Legal advice is that while we may rely on section 38 of the Immigration Ordinance to implement the prohibition in respect of entering Hong Kong, this would not cover persons transitting Hong Kong. Instead of limiting sections 11 and 12 of the Regulation to the transit situation and relying on section 38 of the Immigration Ordinance to cover the entry situation, we believe that it would be clearer and more transparent for the sanctions against a particular place to be dealt with in a single Regulation, even if, as a result, there is some overlap with other legislation.

Enforcement power

5. Members have also asked for justifications for the enforcement powers in the Regulation. These powers are modelled on powers which existed in the previous United Kingdom (UK) Orders. There are comparable enforcement powers in other Hong Kong Ordinances.

6. Sections 17 and 18 of the Regulation provide that an authorized officer may request a person who is about to leave/enter the HKSAR to make declarations. A similar provision can be found in section 34A of the Dutiable Commodities Ordinance (Cap 109). Section 17 and 18 of the Regulation also provide that an authorized officer may search a person for certain purposes. Similar provisions on search (without warrant) can be found in section 12 of the Ozone Layer Protection Ordinance (Cap 403), section 23 of the Post Office Ordinance (Cap 98), section 24 of the Import and Export Ordinance (Cap 60), section 12 of the Control of

Chemicals Ordinance (Cap 145), and section 52 of the Dangerous Drugs Ordinance (Cap 134). Details of these provisions are at Annex B.

7. Sections 19, 20, and 21 of the Regulation provide that an authorized officer may, without warrant, board/search/detain suspected ships/ aircrafts/vehicles. We have already provided information on similar provisions in other legislation vide our letter of 13 January 2004.

8. Section 25 of the Regulation provides for power of authorized officers to obtain evidence and information. Similar powers are provided for in section 27 of the Air Pollution Control Ordinance (Cap 311), section 35 of the Water Pollution Control Ordinance (Cap 358), and section 34 of the Insurance Companies Ordinance (Cap 41). Details of these provisions are at Annex C.

Penalty levels

9. Members have asked for information on the penalty levels in relation to the enforcement powers referred to in paragraph 6 and Annex B of our letter of 13 January 2004.

10. Sections 19, 20 and 21 of the Regulation have the following penalty provisions:

- (a) a person, without reasonable excuse, refuses or fails to comply with a request made by an authorized officer is liable on conviction to a fine at level 6 (presently \$100,000) and to imprisonment for 6 months;
- (b) a person who recklessly provides information or produces information that is false in a material manner is liable, on conviction on indictment to a fine and to imprisonment for 2 years; or on summary conviction to a fine at level 6 and to imprisonment for 6 months; and
- (c) a person who obstructs an authorized officer in the exercise of his powers is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

The relevant penalty provisions in the ordinances referred to in paragraph 6 and Annex B of our letter of 13 January 2004 are set out at Annex D.

Implementation of UNSC Resolutions in other jurisdictions

11. Members have asked for information on how resolutions of the United Nations Security Council are implemented in other jurisdictions.

12. We have looked at the situation in the UK, Australia, Canada, New Zealand and Singapore, which are all common law jurisdictions. The same approach is adopted in all of these jurisdictions. Subsidiary legislation is made pursuant to the following primary legislation:

UK - United Nations Act 1946

Australia - Charter of the United Nations Act 1945

Canada - United Nations Act

New Zealand - United Nations Act 1946

Singapore - United Nations Act 2001

13. We have not conducted a detailed comparison of the various items of subsidiary legislation. But as indicated in the paper prepared by the Legal Service Division of the Legislative Council Secretariat (No. LS36/03-04), Orders made pursuant to the United Nations Sanctions Ordinance (Cap 537) have in the past been modelled on Orders made under the United Nations Act 1946 [UK]. The Hong Kong Orders accordingly bear a similarity to the UK Orders.

Yours sincerely,

(Mrs Philomena Leung)

for Secretary for Commerce, Industry and Technology

c.c. DoJ (Attn: Mr John Hunter)

Section 38 of the Immigration Ordinance (Cap 115)

(1) Subject to subsection (2), a person who-

(a) being a person who by virtue of section 7 may not land in Hong Kong without the permission of an immigration officer or immigration assistant, lands in Hong Kong without such permission; or

(b) having landed in Hong Kong unlawfully, remains in Hong Kong without the authority of the Director,

shall be guilty of an offence and shall be liable on conviction to a fine at level 4 and to imprisonment for 3 years.

(2) A person may land in Hong Kong, without the permission of an immigration officer or immigration assistant, for the purpose of examination under section 4(1)(a) in accordance with arrangements in that behalf approved by the Director, and if he submits himself forthwith to such examination shall be deemed for the purposes of subsection (1) not to have landed unless and until permission to land is granted to him.

(3) The Governor may by order provide that subsection (1) shall not apply to an immigrant who lands from a ship or aircraft in such circumstances as may be specified in the order.

(4) If a person lands from a ship in contravention of subsection (1)(a)-

(a) the captain of the ship; and

(b) the owner of the ship and his agent,

shall be guilty of an offence and shall be liable-

(i) on conviction on indictment, to a fine of \$600,000 and to imprisonment for 7 years; and

(ii) on summary conviction, to a fine of \$600,000 and to imprisonment for 3 years,

unless he proves that all reasonable steps had been taken to ensure that persons did not land from the ship in contravention of subsection (1).

Provisions on search (without warrant)

Section 12 of the Ozone Layer Protection Ordinance (Cap 403) provides, inter alia, that an authorized officer may search a person and property and effects of a person whom he reasonably suspects of being guilty of an offence under this Ordinance.

Section 23 of the Post Office Ordinance (Cap 98) provides, inter alia, that any public officer authorized in writing by the Postmaster General may break open any door of any house, building or place and enter thereinto; forcibly board and enter any ship (not being or having the status of a ship of war); and search any person found in such house, building or place, or on board such ship.

Section 24 of the Import and Export Ordinance (Cap 60) provides, inter alia, that any member of the Customs and Excise Service and any authorized officer may search a person and property and effects of any person whom he reasonably suspects of being guilty of an offence under this Ordinance.

Section 12 of the Control of Chemicals Ordinance (Cap 145) provides, inter alia, that any police officer or any member of the Customs and Excise Service may stop and search any person, and search the property of any person if he has reason to suspect that such person has in his actual custody an article liable to seizure.

Section 52 of the Dangerous Drugs Ordinance (Cap 134) provides, inter alia, that any police officer and any member of the Customs and Excise Service may search any person arriving in Hong Kong or about to depart from Hong Kong.

Power of authorized officers to obtain evidence and information

Section 27 of the Air Pollution Control Ordinance (Cap 311) provides that the Authority may, by notice in writing to any person, require him to furnish to the Authority, within such time and in such form as is specified in the notice, any information specified in the notice which the Authority may reasonably require for the purpose of exercising and performing his functions, duties and powers under this Ordinance. A person who fails without reasonable excuse to comply with any of the requirements of a notice duly served on him or makes any statement which he knows to be incorrect in a material respect or recklessly makes any statement which is incorrect in a material respect or knowingly omits any material particular, commits an offence and is liable to a fine of \$50,000.

Section 35 of the Water Pollution Control Ordinance (Cap 358) provides that the Authority may by notice in writing to any person require him to furnish to the Authority, within a period and in a form stipulated in the notice, any information which the Authority may reasonably require for the purpose of exercising and performing his powers, functions and duties under this Ordinance. A person who fails without reasonable excuse to comply with the requirements of a notice served on him or makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular or knowingly omits any material particular, commits an offence and is liable to a fine of \$10,000.

Section 34 of the Insurance Companies Ordinance (Cap 41) provides that the Insurance Authority may require an insurer to furnish him, at specified times or intervals, with information about specified matters. Section 41 further provides that any person who furnishes information which he knows to be false in a material particular or recklessly furnishes information commits an offence and is liable to a fine of \$200,000 and to imprisonment for 2 years.

Penalty Provisions

Section 12 of the Dutiable Commodities Ordinance (Cap 109) provides, inter alia, that any member of the Customs and Excise Service may without warrant stop and board any ship, aircraft, train or vehicle and search the same and every part thereof, and may remain thereon as long as it remains in Hong Kong

The Ordinance also provides for the following maximum penalty levels:

- (a) fine of \$1,000,000 and imprisonment for 2 years for failure to comply with the requisition of any person duly engaged in the performance of any duty or the exercise of any power under the Ordinance (section 16 and Schedule 2);
- (b) fine of \$1,000,000 and imprisonment for 2 years for furnishing incorrect information (section 36 and Schedule 2); and
- (c) fine of \$1,000,000 and imprisonment for 2 years for obstructing any person duly engaged in the performance of any duty or in the exercise of any power under the Ordinance (section 16 and Schedule 2).

Sections 59 and 60 of the Shipping and Port Control Ordinance (Cap 313) provide inter alia, that an authorized officer may stop and board any vessel in the waters of Hong Kong, other than a warship, for the purpose of inspecting or searching the vessel or any part thereof; and that he may require that the vessel which he has boarded shall be left undisturbed for so long as is necessary to carry out the investigation

The Ordinance also provides for the following maximum penalty levels:

- (a) fine of \$10,000 and imprisonment for 6 months for failure to

comply with a direction given under the Ordinance (section 61);

- (b) fine of \$5,000 and to imprisonment for 6 months for providing information which is false or misleading (section 75); and
- (c) fine of \$10,000 and imprisonment for 6 months (fine of \$50,000 and imprisonment for 2 years in the case of an owner, agent or master of a vessel) for obstructing any person in performing or exercising his duty under this Ordinance (section 74).

Section 12 of the Dangerous Goods Ordinance (Cap 295) provides that certain officers may, inter alia, stop, board and search any vessel, vehicle or aircraft in which such officers may have reasonable grounds for suspecting that there may be anything with respect to which an offence against the Ordinance has been committed.

The Ordinance also provides for the following maximum penalty levels:

- (a) fine of \$20,000 and imprisonment for 6 months for wilfully or recklessly giving false information or withholding information (section 14); and
- (b) fine of \$20,000 and imprisonment for 6 months for obstructing any officer in the exercise of the powers conferred upon him by the Ordinance (section 14).

Section 4 of the Dangerous Goods (Consignment by Air) (Safety) Ordinance (Cap 384) provides that an authorized officer may, inter alia, stop, board and search any vessel, vehicle or aircraft in which he has reasonable grounds for suspecting that there may be anything with respect to which an offence against the Ordinance has been committed.

The Ordinance also provides for the following maximum penalty levels:

- (a) fine of \$20,000 and imprisonment for 6 months for wilfully or recklessly giving false information or withholding information (section 4); and
- (b) fine of \$20,000 and imprisonment for 6 months for obstructing any officer in the exercise of the powers conferred upon him by the Ordinance (section 4).

Section 12 of the Control of Chemicals Ordinance (Cap 145) provides that certain officers may stop, board and search any vessel (Other than a ship of war), aircraft (other than a military aircraft) or vehicle if they have reason to suspect that there is therein an article liable to seizure.

The Ordinance also provides for the following maximum penalty levels:

- (a) fine of \$10,000 and imprisonment for 3 years for producing any declaration which is false in a material particular (section 15); and
- (b) fine of \$5,000 and imprisonment for 6 months for obstructing a public officer in the exercise of any power conferred on him (section 15).

Section 52 of the Dangerous Drugs Ordinance (Cap 134) provides that certain officers may stop, board and search any ship, aircraft, vehicle or train if they have reasons to suspect that there is therein an article liable to seizure.

The Ordinance also provides for the following maximum penalty levels:

- (a) fine of \$1,000 and imprisonment for 6 months for failure to comply with a requirement of a public officer for production of

document (sections 52 and 53);

- (b) fine of \$10,000 and imprisonment for 3 years for producing any declaration which is false in a material particular (section 40);
and
- (c) fine of \$1,000 and imprisonment for 6 months for obstructing a public officer in the exercise of any power conferred on him by section 52 (section 53).