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28 April 2004

Clerk to Subcommittee on
United Nations Sanctions (Liberia) Regulation 2003
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong
(Attn: Mr Raymond Lam)
By Fax : 2509 0775

Dear Mr Lam,

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

Thank you for your letter of 18 March 2004 enclosing a submission from the Hong Kong Bar Association (“the Association”). I set out below our response to the issues raised therein.

Disclosure of Relevant Instruction to the Court

2. The Association asked the Administration whether, upon a challenge to a court about the lawfulness of the United Nations Sanctions (Liberia) Regulation 2003 (“the Regulation”), it would say that the court is precluded from examination of the relevant instruction from the Ministry of Foreign Affairs (“the relevant instruction”). The Administration’s view is that the relevant instruction would be protected from disclosure under the doctrine of public interest immunity. That said, the Administration accepts that the question whether the public interest required the

withholding of the relevant document is ultimately a matter for the court to determine. If there is a challenge on the vires of the Regulation and if the court is satisfied that the relevant instruction is likely to give substantial support to the case and asks for inspection, the Administration would be prepared to submit the relevant instruction to the court for inspection for a determination as to whether the relevant instruction should or should not be disclosed. This common law doctrine is maintained as part of the laws of the Hong Kong Special Administrative Region by virtue of Articles 8, 18 and 160 of the Basic Law (BL).

Disclosure of Relevant Instruction to LegCo

3. The Association also asked the Administration to explain the constitutional basis as to why LegCo could not have sight of the relevant instruction. As aforementioned, it is the Administration's view that the relevant instruction would be protected under the common law doctrine of public interest immunity. Similarly the relevant instruction would be protected from disclosure to LegCo under BL48(11) which entrusts the Chief Executive with the power and function to "decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees". When BL48(11) is construed in the common law context, this provision would be wide enough to cover those documents that could be withheld from disclosure under the common law doctrine of public interest immunity.

Yours sincerely,

(Mrs Philomena Leung)

for Secretary for Commerce, Industry and Technology

<u>c.c.</u>	<u>Attn</u>	<u>Fax</u>
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