

立法會
Legislative Council

LC Paper No. LS70/03-04

Paper for the Subcommittee on United Nations Sanctions (Liberia) Regulation 2003

**Enforcement powers and penalty levels under
the United Nations Sanctions (Liberia) Regulation and some other Ordinances**

Background

In the Administration's response (LC Paper No. CB(2)1377/03-04(01)) submitted to the meeting of the Subcommittee on 20 February 2004, the Administration stated that the enforcement powers in the United Nations Sanctions (Liberia) Regulation 2003 ("the Liberia Regulation") were comparable to other Hong Kong Ordinances and summaries of the relevant provisions were given in the Annexes. Members have requested the Assistant Legal Adviser to comment on those provisions.

Comparing the Liberia Regulation with other Ordinances

2. To better compare the Liberia Regulation with other Ordinances, we have also looked at the general enforcement powers of a customs officer under the Customs and Excise Service Ordinance (Cap. 342) (the Customs Ordinance) as well as those of a police officer under the Police Force Ordinance (Cap. 232) (the Police Ordinance). Further, since the Liberia Regulation deals mainly with prohibiting the import and export of Liberian weapons and some specified goods, we have also looked at the specific enforcement powers under the Import and Export Ordinance (Cap. 60) (IE Ordinance). A table listing the relevant enforcement powers and penalty levels is annexed.

Conclusion

3. The enforcement powers of an authorized officer under the Liberia Regulation are apparently wider than the general power of a customs officer under the Customs Ordinance and the specific enforcement powers under some other Ordinances cited by the Administration. The penalty levels prescribed in the Liberia Regulation are generally higher than those prescribed in other statutes. The Administration may be requested to explain the policy intent and rationale in requiring such enforcement powers and imposing such penalty level in implementing the United Nations Security Council Resolution.

Encl.

Prepared by
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Power to request a person who is to leave/enter HKSAR to make declaration

United Nations Sanctions (Liberia) Regulation	Other Ordinances	Comments
<p>Under section 17, an authorized officer may request a person who is to leave Hong Kong to declare whether he has any prohibited goods for Liberia. Under section 18, an authorized officer may request a person who is to enter Hong Kong whether he has any rough diamonds, round logs, timber products from Liberia and to produce such goods.</p> <p><u>Penalty level</u></p> <p>A person who refuses to make a declaration is liable on conviction to a fine of \$100,000. A person who makes a false declaration is liable on conviction on indictment to a fine and to imprisonment for 2 years or on summary conviction to a fine of \$100,000.</p>	<p>Similar provision is found in section 34A of the Dutiable Commodities Ordinance (Cap. 109). It states that a person entering Hong Kong at an entry point shall declare to a customs officer whether he has dutiable goods.</p> <p><u>Penalty level</u></p> <p>A person who fails to declare whether he has dutiable commodities or who makes a false declaration is liable to a fine of \$2,000.</p>	<p>The <u>penalty level</u> prescribed in the Liberia Regulation is higher than that in Cap. 109.</p> <p>In the Liberia regulation, an authorized officer means a police officer, a customs officer, a public officer employed in the Customs and Excise Department in the Trade Controls Officer Grade, and any other person authorized by the Chief Executive. He may or may not be a member of a disciplinary force.</p> <p>Under the Customs Ordinance, a customs officer is not empowered to request a person who is to leave/enter Hong Kong to make declaration.</p>

Power to search without warrant a person who is about to leave/enter HKSAR

United Nations Sanctions (Liberia) Regulation	Other Ordinances	Comments
<p>Under sections 17 and 18, an authorized officer may search without warrant a person who is about to leave/enter Hong Kong to ascertain whether that person has with him any prohibited goods for Liberia, or any rough diamonds, round logs or timber products from Liberia.</p> <p><u>Penalty level</u></p> <p>A person who refuses to allow himself to be searched is liable on conviction to a fine of \$100,000.</p>	<p>Summaries of similar provisions in the Ozone Layer Protection Ordinance (Cap. 403), the Post Office Ordinance (Cap. 98), the Import and Export Ordinance (Cp. 60), the Control of Chemicals Ordinance (Cap. 145) and Dangerous Drugs Ordinance (Cap. 134) are given in Annex B to the Administration's response.</p> <p>Under section 17A of the Customs Ordinance, a customs officer may search a person whom he may reasonably suspect of having committed an offence against the Ordinance or an Ordinance specified in Schedule 2.</p> <p>Under section 54 of the Police Ordinance, a police officer is empowered to search a person if he finds any person whom he reasonably suspects of having committed or of being about to commit an offence.</p> <p><u>Penalty level</u></p> <p>A person who wilfully resists a police officer or a customs officer acting in the execution of his duty is liable on summary conviction to a fine of \$5,000 and to imprisonment for 6 months.</p>	<p>Under the other Ordinances cited by the Administration, an authorized officer will only search a person if he has reason to suspect that person of being guilty of an offence.</p> <p>Under the Liberia Regulation, an authorized officer may or may not have reason to suspect that a person has committed an offence.</p> <p>The United Nations Sanctions Ordinance (Cap. 537) is not included in Schedule 2 to the Customs Ordinance.</p> <p>The <u>penalty level</u> imposed in the Liberia Regulation is higher than those in the Customs Ordinance and the Police Ordinance.</p>

Power to board and search without warrant a suspected ship/aircraft/vehicle

United Nations Sanctions (Liberia) Regulation	Other Ordinances	Comments
<p>Sections 19, 20 and 21 provide that an authorized officer may, without warrant, use reasonable force to board and search a suspected ship/aircraft/vehicle.</p> <p><u>Penalty level</u></p> <p>Any master, charterer of a ship, any charterer, operator or commander of an aircraft, any operator or driver of a vehicle who obstructs an authorized officer is liable on conviction to a fine of \$100,000 and to imprisonment for 6 months.</p>	<p>Similar provisions are found in the Dutiable Commodities Ordinance (Cap. 109), the Shipping and Port Control Ordinance (Cap. 313), the Dangerous Goods Ordinance (Cap. 295) etc.</p> <p>But under section 14 of the Dutiable Commodities Ordinance (Cap. 109), a customs officer or a police officer has to have a magistrate's warrant if he wants to forcibly enter, search, remove and detain any dutiable goods.</p> <p><u>Penalty level</u></p> <p>The penalty levels for contravening relevant provision in Cap. 109, 313, and 295 etc. are summarized in Annex D to the Administration's response.</p>	<p>Under the Liberia Regulation, an authorized officer may, without warrant, use reasonable force to board and search a ship/aircraft/vehicle. This differs from Cap. 109.</p> <p>The <u>penalty level</u> in the Liberia Regulation is higher than that in Cap. 313, 295, the Customs Ordinance and the Police Ordinance but lower than that in Cap. 109.</p>

Power to detain a ship/aircraft/vehicle

United Nations Sanctions (Liberia) Regulation	Other Ordinances	Comments
<p>Under sections 19, 20 and 21, if a ship/aircraft/vehicle is in the HKSAR, an authorized officer may request the master or charterer of a ship, a charterer, operator or commander of an aircraft, an operator or driver of a vehicle to cause the ship/aircraft/vehicle and its cargo to remain in the HKSAR until he is notified by an authorized officer that the ship/aircraft/vehicle and its cargo may depart.</p>	<p>One of the Ordinances cited by the Administration is the Dangerous Drugs Ordinance (Cap. 134). Under section 52 of that Ordinance, to enable a ship or aircraft to be searched, the Commissioner of Customs and Excise or the Commissioner of Police may by order in writing detain a ship for not more than 12 hours or an aircraft for not more than 6 hours. The Chief Secretary for Administration may detain a ship or aircraft for further periods of not more than 12 hours in the case of a ship or not more than 6 hours in the case of an aircraft.</p> <p>Similar provision is found in the Chemical Weapons (Convention) Ordinance.</p> <p>Under the IE Ordinance, no vessel which has a tonnage exceeding 250 gross tons shall be detained for more than 12 hours without the consent of the Chief Secretary for Administration who may detain such vessel for further periods of not more than 12 hours each. No aircraft shall be detained for more than 6 hours without the consent of the Chief Secretary for Administration.</p>	<p>Under the Liberia Regulation, the time for a ship/aircraft/vehicle to be detained is uncertain.</p>

Power to obtain evidence and information

United Nations Sanctions (Liberia) Regulation	Other Ordinances	Comments
<p>Section 25 provides that an authorized person may request a person in the HKSAR to provide to him any information, or to produce to him any document he may require for the purposes of securing compliance with or detecting evasion of the Regulation.</p> <p><u>Penalty level</u></p> <p>A person who without reasonable excuse refuses or fails to comply with an authorized officer's request is liable on conviction to a fine of \$100,000 and to imprisonment for 6 months.</p>	<p>Summaries of similar provisions in the Water Pollution Control Ordinance (Cap. 358), the Air Pollution Control Ordinance (Cap. 311) and the Insurance Companies Ordinance (Cap. 41) are given in Annex C to the Administration's response.</p> <p><u>Penalty level</u></p> <p>The penalty levels for contravening relevant provision in Cap. 358, 311, and 41 are summarized in Annex C to the Administration's response.</p>	<p>The power to request information under the Liberia Regulation is wider than other Ordinances.</p> <p>The penalty level prescribed in the Liberia Regulation is higher than that in Cap. 358 and 311, but lower than that in Cap. 41.</p> <p>Under the Insurance Companies Ordinance (Cap. 41), the Insurance Authority is empowered to request information from persons who have been authorized by him to carry on insurance business.</p>