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16 June 2004

Mrs Sharon Tong
Clerk to Subcommittee on
United Nations Sanctions (Liberia) Regulation 2003
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong
By Fax : 2509 0775

Dear Mrs Tong,

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

This letter sets out the Administration's response to issues raised at the last Subcommittee meeting held on 3 May 2004.

Formal Document issued by the Chief Secretary for Administration

2. The Subcommittee has requested the Administration to provide a formal document issued by the Chief Secretary for Administration confirming the relevant instruction given by the Central People's Government (CPG) in respect of all future regulations to be made under the United Nations Sanctions Ordinance (UNSO). The Chief Secretary for Administration has agreed to this.

Disclosure of Relevant Instruction

3. The Subcommittee would like us to provide further justifications for not disclosing the CPG's instruction (the relevant instruction). As set out in our letter of 28 April 2004, it is the Administration's view that the relevant instruction would be protected from disclosure under the principle of public interest immunity. We understand that it is ultimately for the court to decide, by balancing the competing interests of the parties, whether the public interest requires the withholding from disclosure of the relevant documents.

4. As regards the present case, we remain of the view that the disclosure of the relevant instruction would prejudice the public interest. Since each and every piece of the United Nations Sanctions regulation would be submitted to the CPG for scrutiny before enactment and the Administration has produced a certificate from the Chief Secretary for Administration confirming the relevant instruction from the CPG, the need for the Subcommittee to scrutinise the relevant instruction would not be so substantial that it would override the public interest against disclosure.

Implementation time

5. The Subcommittee has also asked for information on the date when relevant instructions were received and the date when the regulations came into force, and how the instructions were implemented in the interim. Detailed information on the dates when the relevant instructions were issued and when the implementing regulations were gazetted is set out at Annex A.

6. As pointed out at the last meeting, there will inevitably be a time gap between receipt of CPG's instruction and the making of regulations under the UNSO. In the interim, some of the sanctions under the various United Nations Security Council resolutions could be effected through existing law. But obviously not all the sanctions could be so implemented. Annex B provides examples of how existing law was able to give effect to

certain sanctions pending the making of regulations to implement relevant instructions received since 2002.

Yours sincerely,

(Mrs Philomena Leung)
for Secretary for Commerce, Industry and Technology

c.c. Attn:
DoJ Mr John Hunter

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Implementation of Ministry of Foreign Affairs' instruction in relation to United Nations Security Council Resolutions (UNSCRs) after the enactment of United Nations Sanctions Ordinance (Cap. 537)

UNSCR	Instruction issued by the OCMFA	Implemented by	Date of Gazettal
661 687 986	16/6/1997	UNS (Iraq) (Control of Gold, Securities, Payments and Credits) Regulation UNS (Iraq) Regulation	22/8/1997 22/8/1997
748 883	16/6/1997	UNS (Libya) Regulation	22/8/1997
748	16/6/1997	UNS (Libya) (Prohibition of Flights) Regulation	22/8/1997
733 788 918 1011	16/6/1997	UNS (Arms Embargoes) Regulation	22/8/1997
864	16/6/1997	UNS (Angola) Regulation	22/8/1997
1127	7/11/1997	UNS (Angola) (Amendment) Regulation 1998	18/9/1998
1160	21/4/1998	UNS (Federal Republic of Yugoslavia) (Prohibition of Terrorist Activity) Regulation	4/12/1998
1160 1171	21/4/1998 4/7/1998	UNS (Arms Embargoes) (Amendment) Regulation 1998	4/12/1998
1171	4/7/1998	UNS (Sierra Leone) (Immigration Control) Regulation	4/12/1998

1173	16/7/1998	UNS (Angola) (Amendment) Regulation 1999	25/6/1999
1192 Statement by the President of Security Council	15/4/1999	UNS (Libya) (Suspension of Operation) Regulation 1999 UNS (Libya) (Prohibition of Flights) (Suspension of Operation) Regulation 1999	2/7/1999 2/7/1999
1267	22/11/1999	UNS (Afghanistan) Regulation	23/6/2000
1298	20/6/2000	UNS (Eritrea and Ethiopia) Regulation	16/3/2001
1306	17/8/2000	UNS (Sierra Leone) (Prohibition Against Importation of Diamonds) Regulation	28/9/2001
1333	17/1/2001	UNS (Afghanistan) (Arms Embargoes) Regulation	12/10/2001
1343	24/5/2001	UNS (Liberia) Regulation UNS (Arms Embargoes) (Amendment) Regulation 2001	14/12/2001 14/12/2001
1385	11/2/2002	UNS (Sierra Leone) (Prohibition Against Importation of Diamonds) Regulation 2002	10/5/2002
1373	5/10/2001	UN (Anti-Terrorism Measures) Ordinance	19/7/2002 (Commencement date for some provisions was 23/8/2002)
1388 1390	11/2/2002	UNS (Afghanistan) (Amendment) Regulation 2002	19/7/2002

1408	23/5/2002	UNS (Liberia) Regulation 2002	4/10/2002
1412	3/6/2002	Administrative measure (UNSCR 1412 was passed on 17 May 2002 to suspend sanctions on travel restriction against senior officials of the National Union for the Total Independence of Angola or adult members of their immediate families for a period of 90 days. We received CPG's instruction in June and it was practically impossible to introduce new legislation given the very short duration of the suspension. Therefore, we struck the balance by adopting the administrative measure of receiving visa applications from Angolans but withholding their processing to comply with the UNS (Angola) Regulation which was then still in force.)	-
1432	28/8/2002	UNS (Angola) (Suspension of Operation) Regulation 2002	18/10/2002
1446	27/12/2002	UNS (Sierra Leone) (Prohibition Against Importation of Diamonds) Regulation 2003	4/4/2003
1439 1448	23/12/2002	UNS (Angola) (Repeal) Regulation 2003	4/4/2003
1452	14/2/2003	(The measures decided at UNSCR 1452 were adequately implemented by UNS (Afghanistan) Regulation and there was no need to introduce new legislation.)	-
1478	15/5/2003	UNS (Liberia) Regulation 2003	7/11/2003
1506	9/10/2003	UNS (Libya) (Repeal) Regulation 2004	13/2/2004

**Examples of how existing law could give effect to certain sanctions
pending the making of regulations to implement relevant instructions**

UNSCRs	Requirements	Examples of how existing law could give effect to the sanctions
1388 1390	<p>To implement the following measures in respect of Afghanistan -</p> <ul style="list-style-type: none"> (a) prohibition of supply or delivery of arms and related materials to the individuals and undertakings designated by the UN committee; (b) prohibition of the provision of technical advice or training related to military activities to the individuals and undertakings designated by the UN Committee; (c) prohibition of the provision of funds or other financial assets or economic resources to the individuals and undertakings designated by the UN Committee; (d) prevention of the entry into or transit through the HKSAR by the individuals designated by the UN Committee; and (e) lifting of sanctions on taking off from or landing in the HKSAR by an aircraft owned, leased or 	<p>In respect of (a), Regulation 2 of the Import and Export (Strategic Commodities) Regulations (Cap. 60G) provides that no one should import or export an article specified in Schedule 1 to the Regulations except under and in accordance with an import or export licence issued by the Director-General of Trade and Industry. The Trade and Industry Department maintains import and export control on strategic commodities including munitions items, chemical and biological weapons and their precursors, nuclear materials and equipment, and dual-use goods that are capable to be developed into weapons of mass destruction.</p> <p>In respect of entering into Hong Kong referred to in (d), section 7 of the Immigration Ordinance (Cap. 115) provides that a person may not land in Hong Kong without the permission of an immigration officer or immigration assistant unless he enjoys the right of abode or has the right to land in Hong Kong, or the special provisions in Cap. 115 relating to members of an aircraft crew or servicemen apply.</p>

	operated by the Taliban.	
1408	<p>To impose the following sanctions against Liberia -</p> <p>(a) prohibition of the supply or delivery of arms and related materials to Liberia;</p> <p>(b) prohibition of the provision of military training or assistance to Liberia;</p> <p>(c) prohibition of the importation of all rough diamonds from Liberia except those controlled by the Government of Liberia whose origin has been verified by a Certificate of Origin regime; and</p> <p>(d) prevention of entry into or transit through the HKSAR by certain individuals designated by the UN Committee.</p>	<p>In respect of (a), Regulation 2 of the Import and Export (Strategic Commodities) Regulations (Cap. 60G) provides that no one should import or export an article specified in Schedule 1 to the Regulations except under and in accordance with an import or export licence issued by the Director-General of Trade and Industry. The Trade and Industry Department maintains import and export control on strategic commodities including munitions items, chemical and biological weapons and their precursors, nuclear materials and equipment, and dual-use goods that are capable to be developed into weapons of mass destruction.</p> <p>In respect of entering into Hong Kong referred to in (d), section 7 of the Immigration Ordinance (Cap. 115) provides that a person may not land in Hong Kong without the permission of an immigration officer or immigration assistant unless he enjoys the right of abode or has the right to land in Hong Kong, or the special provisions in Cap. 115 relating to members of an aircraft crew or servicemen apply.</p>
1412	To suspend travel restriction against senior officials of the National Union for the Total Independence of Angola (UNITA) and related individuals.	Nil. (Since the UNS (Angola) Regulation was still in force then, we adopted the administrative measure of receiving visa applications from Angolans but withholding their processing.)
1432	To further suspend travel restriction against senior officials of the UNITA and related individuals.	Nil. (Since the UNS (Angola) Regulation was still in force then, we adopted the administrative measure of receiving visa applications from Angolans but withholding their processing, pending enactment of the UNS (Angola) (Suspension of Operation) Regulation 2002.)

1446	To extend the restriction on import of rough diamonds from Sierra Leone unless they are controlled under the Certificate of Origin regime.	Section 6C(1) of the Import and Export Ordinance (Cap. 60) and First Schedule to the Import and Export (General) Regulations (Cap. 60A) provides that a licence under section 3 of Cap. 60 is required for importing rough diamonds into Hong Kong.
1439 1448	To lift all sanctions against Angola which included – (a) prohibition of supply of arms, petroleum products and aircrafts to Angola; (b) prohibition of flights to and from Angola; (c) prohibition of the supply and delivery of mining equipment, motorised vehicles and watercraft to certain areas of Angola; (d) prohibition on the supply of aircraft or aircraft components to UNITA and the insurance, engineering and servicing of UNITA aircraft; (e) prohibition of import of diamonds from Angola unless they are controlled through the Certificate of Origin regime; (f) freezing of UNITA's financial resources; (g) closure of the offices of UNITA in the HKSAR; (h) travel restriction against UNITA members; and (i) prevention of official contacts with the UNITA	In respect of (a) to (f), the United Nations Sanctions (Angola) Regulation provides that the Chief Executive may grant a licence or permission in a particular case. In respect of (h), the travel restriction was already been suspended from operation by the UNS (Angola) (Suspension of Operation) Regulation 2002.

	<p>leadership.</p>	
<p>1452</p>	<p>(a) To lift the freeze on funds owned or controlled by Usama bin Laden, members of the Al-Qaida organization and the Taliban, or any other individuals, entities or undertakings designated by the UN Committee if they have been determined by the relevant States to be necessary (i) for basic expenses subject to no negative decision by the UN Committee within 48 hours after the notification by the States, and (ii) for extraordinary expenses, subject to approval having been obtained from the UN Committee.</p> <p>(b) To allow interest, other earnings and payments due on the accounts in (a) above.</p>	<p>(These measures were capable of implementation by way of permission in writing pursuant to the UNS (Afghanistan) Regulation.)</p>
<p>1478</p>	<p>To impose the following sanctions against Liberia -</p> <p>(a) prohibition of the supply of arms and related materials to Liberia;</p> <p>(b) prohibition of the provision of military training or assistance to Liberia;</p> <p>(c) prohibition of the import of all rough diamonds from Liberia unless they are controlled under the Certificate of Origin regime;</p> <p>(d) prohibition of the import of all round logs and timber products originating in Liberia; and</p>	<p>In respect of (a), Regulation 2 of the Import and Export (Strategic Commodities) Regulations (Cap. 60G) provides that no one should import or export an article specified in Schedule 1 to the Regulations except under and in accordance with an import or export licence issued by the Director-General of Trade and Industry. The Trade and Industry Department maintains import and export control on strategic commodities including munitions items, chemical and biological weapons and their precursors, nuclear materials and equipment, and dual-use goods that are capable to be developed into weapons of mass destruction.</p> <p>In respect of (c), Section 6C(1) of the Import and Export Ordinance (Cap. 60) and First Schedule to the Import and Export (General) Regulations (Cap. 60A) provides that a licence under</p>

	<p>(e) prevention of the entry into or transit through the HKSAR by certain individuals designated by the UN Committee.</p>	<p>section 3 of Cap. 60 is required for importing rough diamonds into Hong Kong.</p> <p>In respect of entering into Hong Kong referred to in (e), section 7 of the Immigration Ordinance (Cap. 115) provides that a person may not land in Hong Kong without the permission of an immigration officer or immigration assistant unless he enjoys the right of abode or has the right to land in Hong Kong, or the special provisions in Cap. 115 relating to members of an aircraft crew or servicemen apply.</p>
1506	<p>To repeal sanctions against Libya which included -</p> <p>(a) prohibition of the supply of arms and related technical advice and training to any person connected with Libya;</p> <p>(b) prohibition of the provision of training to Libyan pilots and other aviation personnel;</p> <p>(c) prohibition of the supply of aircraft, airfield infrastructure and oil industry equipment to any person connected with Libya;</p> <p>(d) prohibition of the provision of aircraft servicing for Libyan aircraft or aviation services for any person connected with Libya;</p> <p>(e) prohibition of flights to and from Libya; and</p> <p>(f) freeze on Libyan assets.</p>	<p>(These sanctions had in fact already been suspended by the UNS (Libya) (Suspension of Operation) Regulation 1999 and the UNS (Libya) (Prohibition of Flights) (Suspension of Operation) Regulation 1999. The original Regulations have now been repealed.)</p>

