

**Subcommittee to Examine**  
**the Implementation in Hong Kong of Resolutions of**  
**the United Nations Security Council in relation to Sanctions**

**The Administration's response**  
**to issues raised at the meeting on 30 October 2007**

- (a) **To set out the regulation-making process in writing, detailing all relevant steps taken, as well as to inform the Subcommittee of the scope of the instruction issued by MFA to CE**

The CPG when issuing instructions to implement sanctions under a United Nations Security Council (“UNSC”) Resolution in the HKSAR, would state that the purpose is to implement the international obligations of the People’s Republic of China, and would require the HKSARG to take concrete measures to effectively implement the relevant Resolution. After receiving the instructions, the HKSARG would prepare a draft regulation under the United Nations Sanctions Ordinance, Cap. 537 (“UNSO”). When the draft regulation is ready, we would present it to the CPG and ask for comments. Only after the Regulation has been endorsed by the CPG would the HKSARG submit it to the Executive Council for approval.

Please refer to the “Flow-chart of the Major Steps in the Sanctions Regulation-making Process” at **Annex** setting out the major steps in the sanctions regulation-making process for ease of reference.

- (b) To explain why Annex B of the Administration's response dated 15 January 2003 to the former Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002, and the reply to (a) in the Administration's letter dated 19 February 2003 from the Commerce, Industry and Technology Bureau, said it was left to the HKSAR Government to work out the details of the measures to be adopted to implement the relevant provisions of the UNSC resolutions in the HKSAR.**

In the two letters concerned, the Administration was responding to a request (and a follow-up question) from the former Subcommittee for the Administration to disclose the MFA's instructions to implement specific UN sanctions.

In the responses, the Administration explained why it would not be appropriate to provide copies of such instructions to the Subcommittee. We also confirmed that we had received instructions from the MFA to implement the relevant UNSC Resolutions, and relayed the key contents of these instructions. The responses focused on the issue of why the Administration was not in a position to disclose the MFA instructions to the Subcommittee (whilst assuring the Subcommittee that the Administration had acted under appropriate authority in making the relevant regulations), rather than describing the regulation-making process in full. The reference to the details of the implementing measures being left to the HKSARG described the discretion which the HKSARG has always had in the detailed drafting of the regulation, and this point was provided by way of supplement only.

At the meeting of 30 October 2007, the scope of the CPG instruction and the regulation-making process were specifically considered. As the Secretary for Justice explained to the Subcommittee, having worked out the details of the measures in the form of a draft regulation, the HKSARG then presents the draft regulation to the CPG and it is only after the CPG has endorsed the draft regulation that we will submit this to the Executive Council. Accordingly, the draft regulation is part and parcel of the CPG's instructions to the Chief Executive.

The contents of the two letters should be considered in their proper contexts and the Administration assures the Subcommittee that there was no intention whatsoever to mislead the former Subcommittee.

- (c) **To explain whether and how the instruction given by MFA relating to the enactment of the United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (“UN(ATM)O”) was different from that of regulations made under the UNSO insofar as the adoption of legislative approach to implement UNSC Resolutions was concerned.**

UNSC Resolution 1373 sought to combat terrorism on various fronts, including taking measures against terrorist financing. It requires, amongst other things, the prevention and suppression of terrorist financing, and criminalising direct, indirect and wilful provision or collection of funds for terrorist acts and freezing of terrorist assets. This is different from other UNSC Resolutions relating to sanctions which measures are often temporary in nature and relate to particular places. In addition to Resolution 1373, there are other international instruments combating terrorism and terrorist financing, such as the Special Recommendations of the Financial Action Task Force and the International Convention for the Suppression of Terrorist Bombings. New legislative measures were required to give effect to those requirements under the aforementioned international instruments not covered by existing laws and administrative arrangements.

In considering the different legislative options to implement the requirements under the international instruments against terrorism, the Administration decided to draw up a new piece of legislation. The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) has been enacted for the purpose. In the course of the legislative exercise, the Administration had informed the MFA of the different possible legislative approaches for implementing Resolution 1373 and explained the Administration’s considerations in deciding on the approach to be adopted. The CPG expressed no objection thereto.

- (d) To consider the suggestion of consulting LegCo on the draft regulations before forwarding them to CPG for approval in view of the serious penal effect imposed by UNSO**

As noted at the Subcommittee meeting, safeguards already exist within the legislative process, in that the principal Ordinance (i.e., the UNSO) already lays down the legislative framework for Regulations made thereunder, including the maximum penalties that can be imposed. In addition, the Regulations can *only* implement sanctions under UNSC Resolutions, and are subject to vetting by the CPG before they are made.

The current arrangement helps to ensure the prompt implementation of UN sanctions. Given that the UN sanctions, which are often time-critical, relate to the international obligations of the PRC, it is clearly desirable to implement measures pursuant to the MFA's instructions as soon as possible.

Commerce and Economic Development Bureau  
Department of Justice

30 November 2007

**Flow-chart of the Major Steps  
in the Sanctions Regulation-making Process**

