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工商及旅遊科

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Our Ref: CITB CR 41/08/5

1 March 2010

Ms YUE Tin Po  
Clerk to the Subcommittee  
to Examine the Implementation in Hong Kong of Resolutions  
of the United Nations Security Council in relation to Sanctions  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear Ms Yue,

**United Nations Sanctions (Democratic People's Republic of Korea)  
(Amendment) Regulation 2010**

I refer to your letter of 1 February 2010 and the Secretariat's email of 3 February, seeking supplementary information on the captioned Regulation concerning (a) the new provisions relating to forfeiture and disposal of seized items; (b) details on the three instructions from the Ministry of Foreign Affairs (MFA) of the People's Republic of China; and (c) the list of persons and entities specified by the Chief Executive (CE) for the purpose of implementing financial sanctions under the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537 AE). Our responses are set out below.

***(a) Forfeiture and disposal of seized items***

2. As explained at the Subcommittee's meeting held on 29 January 2010, paragraph 14 of the United Nations Security Council (UNSC) Resolution 1874 imposed an obligation on Member States to seize and dispose of prohibited items identified in inspections. To give effect to the decision of the UNSC, we enacted sections 24A and 24B of Cap. 537 AE under the Amendment Regulation to provide for new powers to forfeit and dispose of seized prohibited items pursuant to a court order.

3. This is in accordance with the empowering section under section 3 of the United Nations Sanctions Ordinance (Cap. 537). Section 3(1) of Cap. 537 provides that "The Chief Executive shall make regulations to give effect to a relevant instruction." Pursuant to subsection (2), contravention of the Regulations may be made an offence and penalties may be prescribed therefore subject to the maximum penalty set out in subsection (3). Subsection (3) is intended to set out the maximum fine and term of imprisonment to be prescribed under subsection (2) and does not restrict the type of penalties that could be imposed under subsection (2).

4. Given that Resolution 1874 explicitly requires seizure and disposal of the specified items, the making of the said provisions on forfeiture and disposal is not only incidental to but is essential to give effect to such requirement as instructed under the relevant instruction.

5. It should also be noted that there is no mandatory forfeiture penalty under the said provision and the forfeiture proceeding is under close scrutiny by the court. A warrant is required to seize and dispose of an item and an owner or claimant of a seized item is also given an opportunity to raise an objection under section 24A of Cap. 537 AE. The court is not compelled to make an order and is in fact given a discretion to make the appropriate order in the circumstances under section 24B of Cap. 537 AE and in the light of Resolution 1874.

6. In view of the above paragraphs, the provisions on forfeiture and disposal are properly made pursuant to section 3 of Cap. 537 and are intra vires.

7. In considering how best to implement paragraph 14 of UNSC Resolution 1874 in Hong Kong, we have examined section 102 of the Criminal Procedure Ordinance (Cap. 221), as well as sections 27 – 30 (Part VI) of the Import and Export Ordinance (Cap. 60). It is noted that section 102 of Cap. 221 only provides for general powers of the court to deal with disposal of

property without any specified procedures about applying for or defending against the disposal order. On the other hand, Part VI of Cap. 60 sets out the detailed procedures for forfeiting the seized items and circumstances under which a court order is not required including 'mandatory' forfeiture under Part VI of Cap. 60, whereby seized items shall be forfeited to the Government if no notice of claim was received upon expiration of the appropriate period of time.

8. Having reviewed the above, we see the merits of adding new sections 24A and 24B under Cap. 537 AE in order to implement the decisions of UNSC on forfeiture and disposal of seized items, instead of relying on the relevant provisions in Cap. 221 or Cap. 60. The newly added provisions provide transparency and improvement to the procedural aspect to enable the interested parties to claim back or object to the forfeiture of seized items in an orderly manner under the self-contained regime of Cap. 537 AE. Moreover, the trade will find sections 24A and 24B familiar, as they are not too different from the established forfeiture arrangements under Part VI of Cap. 60 (apart from excluding the mandatory forfeiture provisions). Empowering the court to scrutinize the application for forfeiture and disposal under sections 24A and 24B also gives better protection to the rights of the owner of the seized items.

9. In light of the above considerations, we are of the view that the new sections 24A and 24B are appropriate and adequate for the purpose of implementing paragraph 14 of the UNSC Resolution 1874.

***(b) Instructions from the MFA***

10. The CE received three separate instructions from the MFA between June and August 2009 which required the Hong Kong Special Administrative Region to implement UNSC Resolution 1874 and related decisions made by the Committee established under paragraph 12 of UNSC Resolution 1718 (the Committee) concerning sanctions against the Democratic People's Republic of Korea. The Amendment Regulation, and the Government Notice No. 505(2010) mentioned in (c) below, were made to give effect to these instructions. Details of these three instructions are as follows -

- (a) **Instruction received in June 2009** concerns the decision of the Committee in UNSC document S/2009/222, which added items listed in UNSC document S/2009/205 as subject to prohibition under UNSC Resolution 1718, and specified three entities subject to financial sanctions;

- (b) **Instruction received in July 2009** concerns the decision of UNSC under UNSC Resolution 1874 (please refer to LC Paper No. CB (1)903/09-10(01) circulated to Members on 18 January 2010 for details of the resolution); and
- (c) **Instruction received in August 2009** concerns the decision of the Committee in UNSC document S/2009/364 to add five entities and five individuals as subject to financial sanctions, as well as specify two additional prohibited items.

***(c) List of entities and persons specified under Cap. 537 AE***

11. To implement the financial sanctions in section 8 of Cap. 537 AE, the CE needs to specify the persons and entities designated by the Committee established under paragraph 12 of UNSC Resolution 1718 as “relevant person” and “relevant entity” by notice published in the Gazette under section 31 of Cap. 537 AE. We gazetted the latest list of relevant persons and entities subject to financial sanctions on 29 January 2010. The relevant Government Notice is enclosed for Members’ reference.

Yours sincerely,



(Wendy Chung)

for Secretary for Commerce and Economic Development

Encl.

## UNITED NATIONS SANCTIONS ORDINANCE (Chapter 537)

Pursuant to the power delegated by the Chief Executive, I hereby specify, under section 31 of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap 537 sub.leg. AE), the following persons and entities respectively as a relevant person and a relevant entity. This new list supersedes all previous lists specified and gazetted under section 31 of the said regulation.

( Mrs Rita Lau )  
Secretary for Commerce and Economic Development

### LIST OF INDIVIDUALS

1. **Yun Ho-jin:** Director of Namchongang Trading Corporation; oversees the import of items needed for the uranium enrichment program. (Additional information: born 13 October 1944; also known as Yun Ho-chin)
2. **Ri Je-son:** Director of the General Bureau of Atomic Energy (GBAE), chief agency directing DPRK's nuclear program; facilitates several nuclear endeavors including GBAE's management of Yongbyon Nuclear Research Center and Namchongang Trading Corporation. (Additional information: born 1938; also known as Ri Che-son)
3. **Hwang Sok-hwa:** Director in the General Bureau of Atomic Energy (GBAE); involved in DPRK's nuclear program; as Chief of the Scientific Guidance Bureau in the GBAE, served on the Science Committee inside the Joint Institute for Nuclear Research.
4. **Ri Hong-sop:** Former director, Yongbyon Nuclear Research Center, oversaw three core facilities that assist in the production of weapons-grade plutonium: the Fuel Fabrication Facility, the Nuclear Reactor, and the Reprocessing Plant. (Additional information: born 1940)
5. **Han Yu-ro:** Director of Korea Ryongaksan General Trading Corporation; involved in DPRK's ballistic missile program.

## LIST OF ENTITIES

1. **KOREA MINING DEVELOPMENT TRADING CORPORATION** (a.k.a. CHANGGWANG SINYONG CORPORATION; a.k.a. EXTERNAL TECHNOLOGY GENERAL CORPORATION; a.k.a. DPRKN MINING DEVELOPMENT TRADING COOPERATION; a.k.a. “KOMID”). Central District, Pyongyang, DPRK. Primary arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons.
2. **KOREA RYONBONG GENERAL CORPORATION** (a.k.a. KOREA YONBONG GENERAL CORPORATION; f.k.a. LYONGAKSAN GENERAL TRADING CORPORATION). Pot’onggang District, Pyongyang, DPRK; Rakwon-dong, Pothonggang District, Pyongyang, DPRK. Defense conglomerate specializing in acquisition for DPRK defense industries and support to that country’s military-related sales.
3. **TANCHON COMMERCIAL BANK** (f.k.a. CHANGGWANG CREDIT BANK; f.k.a., KOREA CHANGGWANG CREDIT BANK). Saemul 1-Dong Pyongchon District, Pyongyang, DPRK. Main DPRK financial entity for sales of conventional arms, ballistic missiles, and goods related to the assembly and manufacture of such weapons.
4. **NAMCHONGANG TRADING CORPORATION**

Description: Namchongang is a DPRK trading company subordinate to the General Bureau of Atomic Energy (GBAE). Namchongang has been involved in the procurement of Japanese origin vacuum pumps that were identified at a DPRK nuclear facility, as well as nuclear-related procurement associated with a German individual. It has further been involved in the purchase of aluminum tubes and other equipment specifically suitable for a uranium enrichment program from the late 1990s. Its representative is a former diplomat who served as DPRK's representative for the IAEA inspection of the Yongbyon nuclear facilities in 2007. Namchongang's proliferation activities are of grave concern given the DPRK's past proliferation activities.

Location: Pyongyang, DPRK.

A.K.A.: NCG; NAMCHONGANG TRADING; NAM CHON GANG CORPORATION; NOMCHONGANG TRADING CO.; NAM CHONG GAN TRADING CORPORATION



**5. HONG KONG ELECTRONICS**

Description: owned or controlled by, or acts or purports to act for or on behalf of Tanchon Commercial Bank and KOMID. Hong Kong Electronics has transferred millions of dollars of proliferation-related funds on behalf of Tanchon Commercial Bank and KOMID (both designated by the Committee in April 2009) since 2007. Hong Kong Electronics has facilitated the movement of money from Iran to the DPRK on behalf of KOMID.

Location: Sanaee St., Kish Island, Iran.

A.K.A.: HONG KONG ELECTRONICS KISH CO.

**6. KOREA HYOKSIN TRADING CORPORATION**

Description: a DPRK company based in Pyongyang that is subordinate to Korea Ryonbong General Corporation (designated by the Committee in April 2009) and is involved in the development of WMD.

Location: Rakwon-dong, Pothonggang District, Pyongyang, DPRK.

A.K.A.: KOREA HYOKSIN EXPORT AND IMPORT CORPORATION

**7. GENERAL BUREAU OF ATOMIC ENERGY (GBAE)**

Description: The GB AE is responsible for the DPRK's nuclear program, which includes the Yongbyon Nuclear Research Center and its 5 MWe (25 MWt) plutonium production research reactor, as well as its fuel fabrication and reprocessing facilities. The GB AE has held nuclear-related meetings and discussions with the International Atomic Energy Agency. GB AE is the primary DPRK government agency that oversees nuclear programs, including the operation of the Yongbyon Nuclear Research Center.

Location: Haeudong, Pyongchen District, Pyongyang, DPRK.

A.K.A.: General Department of Atomic Energy (GDAE)

**8. KOREAN TANGUN TRADING CORPORATION**

Description: Korea Tangun Trading Corporation is subordinate to DPRK's Second Academy of Natural Sciences and is primarily responsible for the procurement of commodities and technologies to support DPRK's defense research and development

programs, including, but not limited to, WMD and delivery system programs and procurement, including materials that are controlled or prohibited under relevant multilateral control regimes.

Location: Pyongyang, DPRK.