

立法會
Legislative Council

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

**Minutes of the seventh meeting on
Tuesday, 13 January 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Cyd HO Sau-lan, JP (Chairman)
Hon James TO Kun-sun
Hon IP Kwok-him, GBS, JP
Hon NG Leung-sing, SBS, JP
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon Martin LIAO Cheung-kong, SBS, JP

Public officers attending : Agenda item I

Ms Carol YUEN Siu-wai, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)¹

Mr Sam HUI Chark-shum
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)²

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

Miss Michelle FUNG Bun-bun
Acting Senior Government Counsel
(Treaties & Law)
Department of Justice

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Connie HO
Senior Council Secretary (1)3

Action

I. Meeting with the Administration

(File Ref: CITB CR 136/53/1 -- Legislative Council Brief on
United Nations Sanctions
(Côte d'Ivoire) Regulation
2014

File Ref: CITB CR 106/53/1 -- Legislative Council Brief on
United Nations Sanctions
(Democratic People's Republic
of Korea) (Amendment)
Regulation 2014

LC Paper No. LS79/13-14 -- Legal Service Division Report
on L.N. 114 and L.N. 115 for
the House Committee meeting
on 10 October 2014

LC Paper No. CB(1)330/14-15(01) -- Assistant Legal Adviser's letter
dated 13 November 2014 to
the Administration

- LC Paper No. CB(1)330/14-15(02) -- Administration's reply letter dated 26 November 2014 to Assistant Legal Adviser
- File Ref: CITB CR 95/53/1 -- Legislative Council Brief on United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2014
- LC Paper No. LS18/14-15 -- Legal Service Division Report on L.N. 143 for the House Committee meeting on 5 December 2014
- LC Paper No. CB(1)330/14-15(03) -- Assistant Legal Adviser's letter dated 2 December 2014 to the Administration
- LC Paper No. CB(1)358/14-15(01) -- Administration's reply letter dated 12 December 2014 to Assistant Legal Adviser)

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

2. The Administration was requested to provide:
- (a) in respect of the use of the new terminology "controlled by" in the United Nations Sanctions (Côte d'Ivoire) Regulation 2014 (L.N. 114 of 2014), information on examples of local legislation in which such a terminology had been used;
 - (b) in respect of the prohibition against making available funds or dealing with funds in the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2014 (L.N. 115 of 2014), information on a case, if any, in Macao that was sanctioned by the United States of America in 2005 for allegedly handling funds for the government of North Korea, including how it was handled by the Macao Government and its implications on Hong Kong, if any; and
 - (c) information on the implementation in Macao of the resolutions of the United Nations Security Council in relation to sanctions.

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)498/14-15(01) on 30 January 2015.)

II. Any other business

3. There being no other business, the meeting ended at 6:24 pm.

Council Business Division 1
Legislative Council Secretariat
12 February 2015

**Proceedings of the seventh meeting of
the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions
on Tuesday, 13 January 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000215	Chairman	Opening remarks by the Chairman	
000216 – 000433	Chairman Administration	<u>Briefing by the Administration on the United Nations Sanctions (Côte d'Ivoire) Regulation 2014 ("the Côte d'Ivoire Regulation 2014")</u>	
000434 – 000838	Chairman Assistant Legal Adviser ("ALA2") Administration	<p>ALA2 briefed members on his enquiry about the rationale for the use of the new phrase "belonging to, or owned or controlled by" in the Côte d'Ivoire Regulation 2014 in place of the phrase "owned by or otherwise belonging to, or held by" in the expired United Nations Sanctions (Côte d'Ivoire) Regulation 2013 (Cap. 537BE) (LC Paper No. CB(1)330/14-15(01)).</p> <p>The Administration responded that the relevant change aimed to bring the wording of the Côte d'Ivoire Regulation 2014 in line with what was adopted in paragraph 11 of the United Nations Security Council ("UNSC") Resolution 1572 and was made with reference to the latest drafting practices of the overseas legislation (LC Paper No. CB(1)330/14-15(02)).</p> <p>The Chairman's query and concern -</p> <p>(a) whether it was necessary to follow the exact wording of the relevant UNSC resolutions in regulations made pursuant to the United Nations Sanctions Ordinance ("UNSO") (Cap.537) in fulfilling Hong Kong's international obligations of implementing the relevant sanctions; and</p> <p>(b) the strict adoption of the terminologies used in the relevant UNSC resolutions in the corresponding regulations made under UNSO might give rise to inconsistencies in the drafting of local legislation.</p>	

Time marker	Speaker	Subject(s)	Action required
000839 – 001213	Chairman Mr Martin LIAO Administration	Mr Martin LIAO's views – (a) the new terminology "controlled by" might reflect an expanded scope of sanction; and (b) adopting the same terminology "controlled by" could help ensure that the scope of sanction in the Côte d'Ivoire Regulation 2014 was in accordance with UNSC Resolution 1572.	
001214 – 001336	Chairman Mr NG Leung-sing	Mr NG Leung-sing's views – (a) the Administration's practice of bringing the wording in local legislation in line with the relevant UNSC resolutions was agreeable; and (b) given that the implementation of the resolutions of UNSC in Hong Kong was on the instruction of the Ministry of Foreign Affairs of the People's Republic of China ("MFA"), the Administration's practice could help ensure consistency in the wording used in both Hong Kong and the Mainland legislation as well as the implementation of the relevant UNSC resolutions in both places.	
001337 – 001536	Chairman Mr Kenneth LEUNG	Mr Kenneth LEUNG's views – (a) there were past cases in which the Securities and Futures Commission ("SFC") had used different Chinese renditions for an English term in some technical legislation and documents to facilitate understanding of respective readers in Hong Kong, the Mainland and Taiwan; and (b) reference could be made to SFC's practice as appropriate such that prevailing Chinese translation of certain terminologies used in Hong Kong laws should be adopted in regulations made pursuant to UNSO to implement the resolutions of UNSC in relation to sanctions in order to facilitate public understanding of the relevant regulations.	

Time marker	Speaker	Subject(s)	Action required
001537 – 001755	Chairman Dr Kenneth CHAN	<p>The Chairman and Dr Kenneth CHAN's views that the Administration should in future provide the Subcommittee with information on:</p> <p>(a) the rationale behind the change in the terminologies used and/or reasons for any change in the drafting approach; and</p> <p>(b) the issues that might arise from the implementation of the relevant sanctions in Hong Kong.</p>	
001756 – 001928	Chairman ALA2 Administration	<p>In relation to ALA2's enquiry about section 29 on making available to the public any future amendment to the list of specified goods, the Administration advised that apart from making available the list of specified goods and any amendments to the list in future for public inspection free of charge at the office of the Director-General of Trade and Industry during normal office hours, such information would be provided under the website for the Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau as well.</p>	
001929 – 003214	Chairman Administration	<p><u>Study of the marked-up version of the Côte d'Ivoire Regulation 2014 (Annex E to CITB CR 136/53/1)</u></p> <p><u>Part 2: Section 4 - Prohibition against making available funds, etc. or dealing with funds, etc.</u></p> <p>In respect of the use of the new terminology "controlled by", the Chairman enquired about the criteria to be adopted by the Administration when determining whether certain funds, financial assets or economic resources were controlled by a relevant person or a relevant entity. The Administration advised that it would be case specific, depending on the actual circumstances of individual cases, including the relationship between the funds/assets/economic resources in question and the relevant person/entity.</p> <p>In response to the Chairman's enquiry on whether the use of the terminology "controlled by" in the Côte d'Ivoire Regulation 2014 had set a precedent in the local legislation, the Administration replied that the new terminology adopted in the Côte d'Ivoire Regulation 2014 was made with reference</p>	<p>The Administration to take follow-up action as required in</p>

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		<p>to the relevant UNSC resolution and overseas legislation. The same consideration might not be applicable in other local legislation. The Administration undertook to provide information on examples of local legislation in which such a terminology had been used.</p> <p>Members raised no objection to the Côte d'Ivoire Regulation 2014.</p>	<p>paragraph 2(a) of the minutes</p>
<p>003215 – 003539</p>	<p>Chairman Administration</p>	<p><u>United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation 2014 ("the DPRK Amendment Regulation")</u></p> <p>The Chairman enquired about the long lead time required for the enactment of the DPRK Amendment Regulation in September 2014 given that the relevant MFA instructions were received in March 2013 and May 2014 respectively. The Administration explained that –</p> <p>(a) paragraph 23 of UNSC Resolution 2094 had for the first time clarified that the term "luxury goods" in paragraph 8(a)(iii) of UNSC Resolution 1718 included a list of items specified in Annex IV of UNSC Resolution 2094. Unlike other prohibited items, the luxury goods listed in Annex IV of UNSC Resolution 2094 were general commodities and could currently be traded freely in Hong Kong;</p> <p>(b) the current prohibition regime under sections 2(1) and 3(2) of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE) was designed primarily for arms and nuclear related materials, equipment, goods and technology. Applying this regime to the luxury goods listed in Annex IV of UNSC Resolution 2094 might affect many bona fide business activities and impose a significant burden on the trade to ensure compliance; and</p> <p>(c) in light of the nature of the luxury goods as specified in Annex IV of UNSC Resolution 2094 and taking account of the local circumstances and the obligation to implement resolutions of UNSC effectively, considerable time was required to work out a</p>	

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		<p>separate and targeted prohibition regime for luxury goods in the DPRK Amendment Regulation (i.e. addition of sections 2A, 3AA and 3B and specifying luxury goods in Schedule 1).</p>	
003540 – 004905	Chairman Administration	<p><u>Study of the marked-up version of the DPRK Amendment Regulation (Annex G to CITB CR 106/53/1)</u></p> <p><u>Part 1: – Preliminary - Section 1</u></p> <p>Members noted that "specified person" was defined under section 9(5) of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE).</p> <p>The Chairman expressed concern about the operational difficulties in implementing travel bans against the list of specified persons. She enquired whether any such person had ever been rejected from entering Hong Kong in the past. The Administration advised that it did not have such records.</p> <p><u>Part 2: Section 2A – Prohibition against supply, sale or transfer of luxury goods</u></p> <p>The Administration briefed members on the new prohibition regime targeted at luxury goods provided under new sections 2A, 3AA, and 3B of and Schedule 1 to Cap. 537AE (Paper No. CB(1)330/14-15(02)).</p>	
004906 – 010127	Chairman Administration Mr Kenneth LEUNG	<p><u>Part 2: Section 3AA – Prohibition against carriage of luxury goods</u></p> <p>Mr Kenneth LEUNG enquired whether a carrier would be liable for the carriage of a passenger who worn a few pieces of jewels (i.e. the prohibited luxury items) from Hong Kong to DPRK. The Administration advised that at present, there was no direct flight or voyage between Hong Kong and DPRK. There was also no transit to DPRK through Hong Kong.</p> <p>The Chairman advised that in addition to notifying the concerned trades in the tourism, import/export and logistic sectors, the Administration should also inform the academic sector of the above</p>	

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		<p>prohibition in view that some universities had organized study tours to DPRK in the past.</p> <p>The Administration responded that –</p> <p>(a) apart from the standard notification arrangements, the Administration had stepped up publicity on the new prohibition regime on carriage of luxury goods to DPRK. Assistance of the Travel Industry Council of Hong Kong was enlisted in notifying travel agencies organizing tours to DPRK from a place outside Hong Kong and the concerned travellers of the relevant prohibition. The Customs and Excise Department had also reminded business operators engaging in import, export and logistic businesses in connection with DPRK of the prohibition; and</p> <p>(b) intermediaries through which universities arranged study tours to DPRK were among the Administration's targets of notification.</p>	
010128 – 010656	Chairman Mr NG Leung-sing Administration	<p><u>Part 2: Section 8 – Prohibition against making available funds, etc. or dealing with funds, etc.</u></p> <p>At the request of Mr NG Leung-sing, the Administration would provide information on a case, if any, in Macao that was sanctioned by the United States of America in 2005 for allegedly handling funds for the DPRK Government, including how it was handled by the Macao Government and its implications on Hong Kong, if any.</p> <p>Since Hong Kong and Macao shared the same status of being a Special Administrative Region of the People's Republic of China, the Chairman considered it worthwhile to study the implementation in Macao of the resolutions of UNSC in relation to sanctions. The Administration was requested to provide the Subcommittee with relevant information.</p>	<p>The Administration to take follow-up action as required in paragraph 2(b) of the minutes.</p> <p>The Administration to take follow-up action as required in paragraph 2(c) of the minutes</p>
010657 – 011107	Chairman Administration	<p><u>Part 2: Section 10C – Prohibition against certain ships from entering waters of Hong Kong</u></p> <p>The Chairman enquired whether the above prohibition had been provided for in other local legislation. The Administration advised that -</p>	

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		<p>(a) provisions relating to inspection of specified ships and prohibition against specified ships from entering the waters of Hong Kong had been provided for in other local legislation; and</p> <p>(b) prohibition against certain ships that had refused to be inspected by other countries pursuant to paragraph 12 of UNSC Resolution 1874 from entering the waters of Hong Kong was a new prohibition.</p>	
011108 – 012615	Chairman ALA2 Administration	<p><u>Schedule 1 - Luxury Goods</u></p> <p>ALA2 enquired about the reasons for the differences between the items of "luxury goods" specified in Schedule 1 to Cap. 537AE and those in Annex IV to UNSC Resolution 2094, and whether the scope of "luxury goods" in Cap. 537AE was intended to be different from that in UNSC Resolution 2094 (according to paragraph 23 of UNSC Resolution 2094, the term "luxury goods" <u>includes, but is not limited to</u>, the items specified in Annex IV (emphasis added)) (LC Paper No. CB(1)330/14-15(01)).</p> <p>The Administration advised that –</p> <p>(a) although paragraph 23 of UNSC Resolution 2094 had provided that luxury goods items needed not be limited to the items specified in Annex IV, the UNSC did not provide specific information to illustrate what other items should be classified as "luxury goods" while member nations of the United Nations also had different ways of handling. Neither were there any specific instructions from MFA on the relevant issue;</p> <p>(b) on the basis of the items listed in Annex IV to UNSC Resolution 2094, the Administration had defined items of prohibited luxury goods in Schedule 1 to Cap. 537AE with reference to the definitions of similar terms, if applicable, adopted in the Harmonized Commodity Description and Coding System and the Road Traffic Ordinance (Cap. 374), which were familiar to business operators; and</p>	

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		<p>(c) the Administration had confined the scope of prohibited luxury goods in Cap. 537AE to that specified in Schedule 1 to Cap. 537AE, which included the items in Annex IV to Resolution 2094 to provide sufficient clarity on the scope of the prohibition for business operators to comply with (LC Paper No. CB(1)330/14-15(02)).</p> <p>Members raised no objection to the DPRK Amendment Regulation.</p>	
012616 – 012900	Chairman Administration	<p><u>Briefing by the Administration on the United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2014 ("the Libya Amendment Regulation")</u></p>	
012901 – 013224	Chairman Administration	<p><u>Study of the marked-up version of the Libya Amendment Regulation (Annex F to CITB CR 95/53/1)</u></p> <p>The Chairman requested the Administration to provide the Subcommittee with marked-up versions of the regulations made under UNSO in larger typeface in the future to facilitate the Subcommittee to conduct clause-by-clause scrutiny of the regulations. The Administration took note of the Chairman's request.</p>	
013225 – 013415	Chairman Assistant Legal Adviser ("ALA1")	<p><u>Part 2: Section 3B - Exceptions to prohibition under Section 3A</u></p> <p>ALA1's enquiry on whether the Administration would consider defining the term "focal point" (referred to in, for example, the newly added section 3B(1) to the United Nations Sanctions (Libya) Regulation 2011, which was adopted from the relevant UNSC resolution) in the relevant Regulation in the future given that the English meaning of the term was vague and was not commonly seen in legislation (LC Paper No. CB(1)330/14-15(03)); and the Administration's reply (LC Paper No. CB(1)358/14-15(01)).</p>	

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013416 – 013700	Chairman Mr Martin LIAO Administration	<p>Mr Martin LIAO's views –</p> <p>(a) defining the term "focal point" could help enhance clarity and facilitate users' understanding; and</p> <p>(b) the Administration should not dismiss the need for a definition for the said term simply because it had appeared once only in the Regulation.</p> <p>The Administration would take note of Mr LIAO's view in the drafting of the relevant Regulation in the future.</p>	The Administration to follow up.
013701 – 014100	Chairman Administration	<p><u>Part 2: Section 8 – Prohibition against entry or transit by certain person</u></p> <p>In response to the Chairman's enquiry, the Administration advised that UNSC would promulgate a list of specified persons including those under the newly added section 8(4)(d).</p>	
014101 – 014455	Chairman Mr Kenneth LEUNG Administration ALA1	<p><u>Part 2: Section 10A – Prohibition against provision of certain services to certain ships</u></p> <p>Expressing concern about the impact of the above prohibition on the businesses of Hong Kong accounting firms in the provision of ship leasing and financing services, Mr Kenneth LEUNG sought clarification on the scope of section 10A.</p> <p>The Administration explained that subject to certain exceptions under section 10B, a person must not provide, directly or indirectly, any specified services to a ship designated by the Committee under paragraph 11 of UNSC Resolution 2146 for the measures in paragraph 10(c) of the Resolution. Such prohibition did not apply to all ships registered in Libya in general. ALA1 added that section 10B had provided for certain exceptions to prohibitions under section 10A, including ships on return to Libya.</p> <p>Members raised no objection to the Libya Amendment Regulation.</p>	

Time marker	Speaker	Subject(s)	Action required
014456 – 015515	Chairman Mr NG Leung-sing Mr Martin LIAO Administration	The Chairman recapped the follow-up actions arising from discussion at the meeting to be taken by the Administration.	

Council Business Division 1
Legislative Council Secretariat
12 February 2015