

立法會
Legislative Council

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by the Administration)

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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 eighth meeting on
Monday, 16 February 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Cyd HO Sau-lan, JP (Chairman)
Hon IP Kwok-him, GBS, JP
Hon NG Leung-sing, SBS, JP
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG

Members absent : Hon James TO Kun-sun
Hon Dennis KWOK
Hon Martin LIAO Cheung-kong, SBS, JP

Public officers attending : Agenda item II

Ms Carol YUEN, 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 Alice CHOY Mun-see
Acting Deputy Principal Government Counsel
(Treaties & Law)
Department of Justice

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

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Connie HO
Senior Council Secretary (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)541/14-15 -- Minutes of meeting held
on 13 January 2015)

The minutes of the meeting held on 13 January 2015 were confirmed.

II. Meeting with the Administration

(File Ref: CITB CR 102/53/1 -- Legislative Council Brief
on United Nations
Sanctions (Somalia)
(Amendment) Regulation
2015

LC Paper No. LS32/14-15 -- Legal Service Division
Report on L.N. 10 for the
House Committee meeting
on 23 January 2015)

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

3. The Subcommittee completed the study of the United Nations
Sanctions (Somalia) (Amendment) Regulation 2015.

Follow-up actions

4. The Administration was requested to -

(a) in respect of sanctions imposed by the United Nations Security
Council ("UNSC"),

- (i) advise whether any non-compliance cases had been identified by the Government of the Hong Kong Special Administrative Region ("HKSARG") since the implementation of the UNSC resolutions in Hong Kong; and if yes, the number of such cases and how they were dealt with by HKSARG; and
 - (ii) provide information on the reporting mechanism and collaboration between HKSARG and the Central People's Government ("CPG") in relation to contravention of UNSC sanctions;
- (b) provide information on the collaboration between the Macao Government and the CPG in respect of the handling of the case of Banco Delta Asia, a bank in Macao that was sanctioned by the United States under the USA Patriot Act for allegedly handling funds for the North Korea Government; and
- (c) provide a break-down by items in respect of Hong Kong's re-exports of "telecommunications equipment" to Somalia.

III. Any other business

5. There being no other business, the meeting ended at 5:08 pm.

**Proceedings of the eighth meeting of
the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions
on Monday, 16 February 2015, at 04:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000400	Chairman	<p>Opening remarks by the Chairman.</p> <p>Confirmation of minutes of the meeting held on 13 January 2015 (LC Paper No. CB(1)541/14-15).</p>	
000401 – 001342	Chairman Administration	<p>Briefing by the Administration on the United Nations Sanctions (Somalia) (Amendment) Regulation 2015 ("the Amendment Regulation").</p> <p><u>Trade relation between Hong Kong and Somalia (Annex F to CITB CR 102/53/1)</u></p> <p>In response to the Chairman's enquiry, the Administration confirmed that in 2013, Hong Kong had exported HK\$101.4 million worth of goods to Somalia. Of these, HK\$100.8 million worth of goods were re-exports of Mainland origin to Somalia via Hong Kong.</p> <p>At the request of the Chairman, the Administration would provide a break-down by items in respect of Hong Kong's re-exports of "telecommunications equipment" to Somalia.</p> <p>Given that Hong Kong's exports to Somalia mainly comprised re-exports of Mainland origin via Hong Kong, the Chairman was concerned that Hong Kong might not be able to fulfill its international obligations in relation to sanctions imposed by the United Nations Security Council ("UNSC") on Somalia should it fail to detect the prohibited items in goods from the Mainland.</p> <p>The Administration advised that –</p> <p>(a) items prohibited under the United Nations Sanctions (Somalia) Regulation (Cap.537 AN) were not the commodities involved in the normal trade between Hong Kong and Somalia. The export and/or import of strategic commodities were subject to the control regime under the Import and Export (Strategic Commodities) Regulations (Cap.</p>	<p>The Administration to take follow-up action as required in paragraph 4(c) of the minutes</p>

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		<p>60G). During the period from 2010 to October 2014, the Trade and Industry Department ("TID") had not issued any permits for import and export of strategic commodities to and from Somalia pursuant to Cap. 60G; and</p> <p>(b) under the comprehensive and stringent control mechanism over the import and export of strategic commodities, the Customs and Excise Department ("C&ED"), being the enforcement agency for strategic trade controls, would conduct physical examinations of imported and exported cargoes in accordance with the prevailing mechanism based on international intelligence.</p> <p>The Chairman enquired about the reporting mechanism between the Central People's Government ("CPG") and the Government of the Hong Kong Special Administrative Region ("HKSARG") in case where prohibited items were detected in re-exports to Somalia via Hong Kong. In this connection, the Chairman sought information on –</p> <p>(a) whether any non-compliance cases had been identified by HKSARG since the implementation of the UNSC resolutions in relation to sanctions in Hong Kong; and if yes, the number of such cases and how they were dealt with by the Government; and</p> <p>(b) the reporting mechanism and collaboration between HKSARG and the CPG in relation to contravention of UNSC sanctions.</p> <p>The Administration was requested to provide relevant information after the meeting</p>	<p>The Administration to take follow-up action as required in paragraphs 4(a)(i) & (ii) of the minutes</p>
001343 – 002217	Chairman Mr NG Leung-sing Administration	<p>At the invitation of the Chairman, the Administration briefed members on its response to the list of follow-up actions arising from discussion at the meeting on 13 January 2015 (LC Paper No. CB(1)498/14-15(01)).</p> <p>Referring to the case of Banco Delta Asia ("the case"), a bank in Macao that was sanctioned by the United States ("US") under the USA Patriot</p>	

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		<p>Act ("the Act") for allegedly handling funds for the North Korea Government, the Chairman and Mr NG Leung-sing considered that -</p> <p>(a) being a special administrative region of the People's Republic of China ("PRC"), Hong Kong and Macao were both required to implement UNSC resolutions in relation to sanctions pursuant to the instructions from the Ministry of Foreign Affairs of PRC; and</p> <p>(b) given the similar status of Hong Kong and Macao in relation to the CPG, how the Macao Government handled the case and collaborated with the CPG to fulfill international obligations would provide useful reference for HKSARG on the handling of cases that were not compliant with international agreements.</p> <p>The Administration was requested to furnish the Subcommittee with relevant information on the collaboration between the Macao Government and the CPG in respect of the case after the meeting.</p> <p>The Administration responded that -</p> <p>(a) the case was not related to the implementation of UNSC resolutions in relation to sanctions in Hong Kong. The case concerned sanctions made by the US Government under the Act which was a piece of US legislation to deter and punish terrorist acts in the US and around the world. The Act was US' local legislation and not an international agreement, different from an international obligation that came from sanctions of the UNSC;</p> <p>(b) collaboration and reporting mechanism between the Macao Government and the CPG in respect of the case might involve internal affairs of the Macao Government. The Administration would explore whether it was appropriate to request such information;</p> <p>(c) to fulfill Hong Kong's international obligations in implementing UNSC resolutions in relation to sanctions, C&ED</p>	<p>The Administration to take follow-up action as required in paragraph 4(b) of the minutes</p>

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		<p>had from time to time conducted random physical examinations of cargos imported from or exported to countries under sanction based on intelligence. C&ED had also paid special attention to goods handled by forwarders and shippers who might have connections with a person or an entity specified by notice published in the Gazette by the Chief Executive pursuant to the regulations made under section 3 of the United Nations Sanctions Ordinance (Cap. 537). No prohibited items had been detected so far; and</p> <p>(d) according to the Administration's record, no law enforcement actions leading to any form of prosecutions had been taken pursuant to the regulations made under Cap 537 in the past.</p>	
002218 – 002438	Chairman Administration	<u>Study of the marked-up version of the Amendment Regulation (Annex E to CITB CR 102/53/1)</u>	
002439 – 003152	Chairman Assistant Legal Adviser 8 ("ALA8") Administration	<p><u>Part 2: Section 5 - Prohibition against making available funds, etc. or dealing with funds, etc.</u></p> <p><u>Part 3: Section 10 - Licence for making available funds, etc. to certain persons or entities or dealing with funds, etc. of certain persons or entities</u></p> <p>In respect of the use of the new terminology "controlled by" in place of "held by" in a number of provisions under sections 5 and 10, ALA 8 enquired whether the two terminologies were the same in terms of the interpretation and operation of the relevant provisions. The Administration advised that from a legal perspective, the meaning of "controlled by" might be broader than that of "held by", and the extent of its coverage was a question of fact and would be subject to the actual circumstances of individual cases.</p> <p>In response to the Chairman's enquiry on how to determine whether certain funds, financial assets or economic resources were "controlled by" certain persons or entities, the Administration advised that it would be case specific, depending on the actual circumstances of individual cases, including the relationship between the</p>	

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		funds/assets/economic resources in question and the relevant person/entity, which party was holding the relevant funds/assets/economic resources as well as the ownership, management structure and decision-making power of the relevant entity.	
003158 – 003910	Chairman Mr NG Leung-sing Administration	<p><u>Part 3: Section 8 – Licence for supply, sale, transfer or carriage of certain goods</u></p> <p><u>Part 3: Section 9 - Licence for provision of certain advice, assistance or training</u></p> <p>In response to the Chairman's enquiry, the Administration advised that the "Federal Government of Somalia" was the governing authority of Somalia recognized by the United Nations.</p> <p><u>Part 8: Section 32 – Duration</u></p> <p>In response to Mr NG Leung-sing's enquiry, the Administration advised that the expiry of sections 8(2)(1), 9(2)(i) and 10(2)(e) at midnight on 30 October 2015 referred to Hong Kong time.</p> <p>Members completed the study of the Amendment Regulation and raised no objection to it.</p>	