

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



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Assistant Legal Adviser
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(Attn: Mr Timothy TSO)
(Fax No.: 2877 5029)

Dear Mr Tso,

United Nations Sanctions (Côte d'Ivoire) Regulation 2014 (L.N. 114 of 2014)

**United Nations Sanctions (Democratic People's Republic of Korea)
(Amendment) Regulation 2014 (L.N. 115 of 2014)**

I refer to your letter of 13 November 2014 on the captioned subject.
Our reply is set out below –

L.N. 114 of 2014

The change to the existing formulation concerning "prohibition against making available funds, etc. or dealing with funds, etc." from "owned by or otherwise belonging to, or held by" to "belonging to, or owned or controlled by" aims to bring the wording in line with what is adopted in paragraph 11 of the United Nations Security Council Resolution (UNSCR) 1572 (*i.e.* ... *freeze immediately the funds, other financial assets and economic resources which*

are... owned or controlled ... by persons designated...) and with reference to the latest drafting practices of the overseas legislation (e.g. section 4 of the UK legislation The Côte d'Ivoire (Sanctions) (Overseas Territories) Order 2012).

Apart from making available the list of specified goods and any amendments to the list in future for public inspection at the office of the Director-General of Trade and Industry during normal office hours, we would consider providing such information at the webpage (http://www.cedb.gov.hk/citb/en/Policy_Responsibilities/united_nations_sanctions.html) under the website for the Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau as well.

L.N. 115 of 2014

Paragraph 23 of UNSCR 2094 has for the first time clarified that the term “luxury goods” in paragraph 8(a)(iii) of UNSCR 1718 includes a list of items specified in annex IV of UNSCR 2094¹. Unlike other prohibited items, the luxury goods listed in annex IV of UNSCR 2094 are general commodities and can currently be traded freely in Hong Kong. There are various business operators involving in the trading and carriage of these luxury goods, ranging from chainstores, exporters and large logistics providers to small retailers and local carriers.

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 UNSCR 2094 might affect many bona fide business activities and impose a significant burden on the trade to ensure compliance.

¹ These items include –

- (a) jewelry:
 - (i) jewelry with pearls;
 - (ii) gems;
 - (iii) precious and semi-precious stones (including diamonds, sapphires, rubies, and emeralds);
 - (iv) jewelry of precious metal or of metal clad with precious metal; and
- (b) transportation items as follows:
 - (i) yachts;
 - (ii) luxury automobiles (and motor vehicles): automobiles and other motor vehicles to transport people (other than public transport), including station wagons;
 - (iii) racing cars.

In light of the nature of the luxury goods as specified in annex IV of UNSCR 2094 and taking account of the local circumstances and the obligation to implement UNSCRs effectively, we consider it more appropriate to provide a separate and targeted prohibition regime for luxury goods by adding sections 2A, 3AA and 3B to Cap. 537AE and specifying luxury goods in Schedule 1 to Cap. 537AE as follows –

- (a) different from sections 2 and 3 of Cap. 537AE, criminal intent is required for the offences under the new sections 2A and 3AA. The change is to address the situation where local business operators could be caught unintentionally if the luxury goods are supplied, sold, transferred and / or delivered indirectly to a place in the Democratic People’s Republic of Korea (DPRK) (e.g. the luxury goods concerned are supplied, sold, transferred or delivered first to a place outside the DPRK (say within Hong Kong) and subsequently supplied, sold, transferred or delivered to the DPRK) without the knowledge of the relevant business operators. Comparing with the existing regime under sections 2 and 3 of Cap. 537AE where the burden is on the defendant to prove a lack of knowledge as a defence, under the new regime under sections 2A and 3AA, the burden would be on the prosecution to prove that the defendant knows or has reason to believe that the item concerned is luxury goods and that the item is to be supplied, sold, transferred or delivered to a place in the DPRK;
- (b) under the new regime under sections 2A and 3AA, the prohibition would apply to the direct or indirect supply, sale, transfer or carriage of luxury goods to **a place** in the DPRK. Unlike other items prohibited in sections 2 and 3, the luxury goods specified in Schedule 1 to Cap. 537AE are general commodities traded freely in Hong Kong, it would not be practical to require local retailers and carriers to ascertain from all their clients whether they are “a person connected with the DPRK”. The new regime therefore does not contain the parts relating to “a person connected with the DPRK” so that bona fide business activities would not be affected if the luxury goods are not supplied, sold, transferred or delivered to a place in the DPRK; and

- (c) based on the items listed in annex IV of UNSCR 2094, we define 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 System² and the Road Traffic Ordinance, which are familiar to business operators. While paragraph 23 of UNSCR 2094 provides that luxury goods items need not be limited to the items specified in annex IV, it is our intention to confine the scope of prohibited luxury goods in Cap. 537AE to that specified in Schedule 1 to Cap. 537AE in order to provide sufficient clarity on the scope of the prohibition for the business operators to comply with.

The change to the existing formulation concerning "prohibition against making available funds, etc. or dealing with funds, etc." from "belonging to, owned or held by" to "belonging to, or owned or controlled by" aims to bring the wording in line with what is adopted in paragraph 8(d) of UNSCR 1718 (*i.e. ... freeze immediately the funds, other financial assets and economic resources which are... owned or controlled ... by persons designated...*) and with reference to the latest drafting practices of the overseas legislation (e.g. section 4 of the UK legislation The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012).

Yours sincerely,



(Jerry Ji)

for Secretary for Commerce and Economic Development

² The Harmonized Commodity Description and Coding System (Harmonized System) has been designed by the World Customs Organization, to serve as a multi-purpose classification suitable for use by customs and statistical authorities, traders, carriers and others concerned with international trade. Hong Kong has adopted the Harmonized System for trade declaration purposes since 1 January 1992.