

## **Implementation of the United Nations Security Council Resolution (UNSCR) 1412**

This paper explains why the Administration considers that the HKSAR Government acted in line with UNSCR 1412 during the period from 17 May 2002 to 14 August 2002 when the United Nations Sanctions (Angola) Regulation was in force.

### **Background**

2. On 17 May 2002, the United Nations (UN) Security Council adopted Resolution 1412, which suspended sanctions on travel restriction and cancellation of travel documents against senior officials of the National Union for the Total Independence of Angola (UNITA) or adult members of their immediate families, previously imposed under Resolution 1127 for a period of 90 days (i.e. until 14 August 2002).

3. According to the United Nations Sanctions (UNS) Ordinance (Cap 537), the Chief Executive is required to make regulations thereunder to give effect to such an instruction. In June 2002, the Government received an instruction from the Ministry of Foreign Affairs of the People's Republic of China (MFA) requesting the HKSAR to implement Resolution 1412. Under a previous instruction from the MFA, the Government had already implemented the sanctions on travel restriction and cancellation of travel documents imposed under

Resolution 1127 in the HKSAR through the enactment of UNS (Angola)(Amendment) Regulation 1998. The relevant provisions are section 4D and 4E of the existing UNS (Angola) Regulation.

### **Practical Difficulties in Implementing UNSCR 1412**

4. After receiving the MFA instruction on UNSCR 1412 in June, we found that it was practically impossible to introduce a regulation under the UNS Ordinance suspending the sanctions to give effect to Resolution 1412 before 14 August. Experience indicated that the whole process of drafting and enacting a Regulation under the UNS Ordinance would take at least two to three months. The chances of having a Regulation in place before UNSCR 1412 expired on 14 August were therefore slim. We also had to take into account the fact that the last meeting of the ExCo before its summer recess was scheduled for 9 July 2002. Even if we had proceeded with the drafting of a Regulation, Resolution 1412 would have expired by the time we tabled the draft regulation before ExCo when it resumed after the summer recess.

5. In view of such practical difficulties we proceeded to explore what action the HKSARG could take which would be consistent with the purpose of UNSCR 1412 and also within the bounds of the existing laws and regulations that were in force. We found that it would be possible for the HKSARG to do so through the existing visa control regime executed by the Immigration Department.

## **Complying with UNSCR 1412 under the Immigration Ordinance**

6. As explained in our earlier replies, the Immigration Ordinance provides that persons who do not enjoy the right of abode or right to land in Hong Kong require permission to land here as visitors regardless of where they come from and regardless of any UN mandated restrictions. Visitors from Angola require a visa to enter the HKSAR. Although UNSCR 1412 provides for a suspension of the travel restrictions imposed by Resolution 1127, it does not derogate from the power of member states to impose visa requirements and certainly does not require that senior officials of the UNITA and their immediate family members be admitted. It follows that not granting a visa to senior officials of the UNITA and their immediate family members during the period when the Resolution was in force would not have constituted a violation of UNSCR 1412.

7. In fact there were no relevant applications during the period when the Resolution was in force. Had there been any visa applications, the Director of Immigration would have examined them and deferred any action until a new Regulation was in force to suspend the travel restrictions as provided for in the UNS (Angola) Regulation.

## **Conclusion**

8. In conclusion, we wish to reiterate that the HKSARG acted in full accordance with the UNS(Angola) Regulation before it was amended on 18 October. We had also ensured that the HKSAR did not violate the UNSCR 1412 in practice despite the fact that we were unable to enact a

Regulation to give effect to it under the UNS Ordinance. Given the difficulties we had with implementing UNSCR 1412 through legislation at the time, we consider that we took steps that were lawful, reasonable, and in the best interests of the HKSAR.

Commerce, Industry and Technology Bureau  
January 2003

## **Instruction received from the Office of the MFA to implement United Nations Security Council Resolution (UNSCR) 1390 in the HKSAR**

The issue of instructions by the Central People's Government (CPG) to the HKSAR to implement UNSCRs is consistent with the Basic Law. As the implementation of UNSCRs concerns foreign affairs and other considerations regarding national interests and international/foreign relations, we consider it inappropriate to release the instruction to implement UNSCR 1390 to parties outside the HKSAR Government.

2. We wish to confirm, however, that the HKSAR Government received MFA's instruction on the implementation of UNSCR 1390 in February 2002. The HKSAR Government was informed of the contents of the resolution and the mandatory measures adopted pursuant to Chapter 7 of the United Nations Charter. As a member state of the United Nations, the People's Republic of China has an obligation to implement the Resolution. The CPG therefore instructed the HKSAR Government to implement the relevant provisions of the Resolution in the HKSAR. It was left to the HKSAR Government to work out the details of the measures to be adopted.

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**Table 1**

Provisions of UNSCR 1390 implemented through the UNS (Afghanistan) Regulation (the Afghanistan Regulation) that could be covered by the UN (Anti-Terrorism Measures) Ordinance (the Anti Terrorism Ordinance)

<b>Provision in UNSCR 1390</b>	<b>Sections of the Afghanistan Regulation</b>	<b>Sections of the Anti-Terrorism Ordinance</b>	<b>Actions</b>
<ul style="list-style-type: none"><li>• Paragraph 2(a) on supply of funds.</li></ul>	<ul style="list-style-type: none"><li>• Section 3</li></ul>	<ul style="list-style-type: none"><li>• Sections 6, 7 and 8</li></ul>	<ul style="list-style-type: none"><li>• Intend to repeal section 3 of the Afghanistan Regulation.</li></ul>
<ul style="list-style-type: none"><li>• Part of paragraph 2(c) that relates to prohibition against the supply of weapons.</li></ul>	<ul style="list-style-type: none"><li>• Sections 3B, 3C and 3E</li></ul>	<ul style="list-style-type: none"><li>• Section 9</li></ul>	<ul style="list-style-type: none"><li>• Intend to repeal sections 3B, 3C and 3E of the Afghanistan Regulation, together with their associated enforcement provisions, i.e., sections 3 F to 3L.</li></ul>

**Table 2**

Provisions of UNSCR 1390 implemented through the UNS (Afghanistan) Regulation (the Afghanistan Regulation) that could **not** be covered by the UN (Anti-Terrorism Measures) Ordinance (the Anti Terrorism Ordinance)

<b>Provisions in UNSCR 1390</b>	<b>Section of the Afghanistan Regulation</b>	<b>Reasons</b>	<b>Actions</b>
<ul style="list-style-type: none"> <li>Paragraph 2(b) on travel restriction.</li> </ul>	<ul style="list-style-type: none"> <li>Section 3A</li> </ul>	<ul style="list-style-type: none"> <li>There is no provision prohibiting the relevant persons* from entering or transiting through the HKSAR under the Anti-Terrorism Ordinance.</li> </ul>	<ul style="list-style-type: none"> <li>Intend to retain section 3A in the Afghanistan Regulation #.</li> </ul>
<ul style="list-style-type: none"> <li>Part of paragraph 2(c) that relates to prohibition against provision of technical advice, assistance or training related to military activities.</li> </ul>	<ul style="list-style-type: none"> <li>Section 3D</li> </ul>	<ul style="list-style-type: none"> <li>There is no provision prohibiting the provision of technical advice, assistance or training related to military activities to relevant persons or relevant undertakings* under the Anti-Terrorism Ordinance.</li> </ul>	<ul style="list-style-type: none"> <li>Intend to retain section 3D in the Afghanistan Regulation #.</li> </ul>

\* Relevant person and relevant undertaking are defined under section 1 of the Afghanistan Regulation.

# Some amendments will be required to some of the sections in the Afghanistan Regulation which are not

being repealed due to the retaining of sections 3 A and 3D. These details will be worked out at the drafting stage.