

**For discussion on
21 December 2015**

**Legislative Council Panel on
Administration of Justice and Legal Services**

Bilingual Legislation Drafting

The referral to the Administration of Justice and Legal Services Panel to which the Administration has been asked to respond is as follows—

“The Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions agreed that the Panel on Administration of Justice and Legal Services be requested to follow up with the Administration regarding the suggestion of the setting up of a panel of advisory language specialists to help ensure no discrepancies between the English and Chinese defined terms in the drafting of the legislation”

2. This information paper responds to the suggestion set out in the referral.

Background to referral

3. The Administration understands that the suggestion arose from a question raised during a Legislative Council Subcommittee meeting held on 11 October 2013 to examine a number of regulations made under the United Nations Sanctions Ordinance (Cap.537). The Subcommittee’s question concerned the Chinese equivalents of the defined terms *specified person* and *designated person* in the English text of the regulations. The two expressions appeared in different regulations examined by the Subcommittee at the meeting.

Rationale for the two defined terms

4. It is a feature of most United Nations Sanctions Resolutions that different measures contained in the same instrument target different individuals or groups. If, for example, travel bans, arms embargoes and financial restrictions target different persons, the domestic legislation to implement the measures will need to distinguish between them. The typical drafting device for achieving this is to use different labelling definitions for different groups of persons.

Chinese equivalents of “specified person” and “designated person”

5. The Chinese terms questioned by the Subcommittee are “指認人士” and “指明人士”. The respective English equivalents are *designated person* and *specified person*. In both the English and Chinese texts of the regulations examined by the Subcommittee the two defined terms are merely artificial labels serving the function of distinguishing between categories of persons to whom different provisions of the regulations apply. They have to be read and understood in the context of the regulations in which they appear.

6. The defined term *specified person* and its Chinese equivalent “指明人士” have been used in many items of subsidiary legislation implementing UN Sanctions.¹

1

Chapter: 537AF	Title:	UNITED NATIONS SANCTIONS (IRAN) REGULATION	Gazette Number:	L.N. 109 of 2013
Section: 8AA	Heading:	Prohibition against sale and acquisition of interest in commercial activity involving uranium mining	Version Date:	14/06/2013

specified person (指明人士) means—

- (a) a person acting in the HKSAR; and
- (b) a person acting outside the HKSAR who is—
 - (i) both a Hong Kong permanent resident and a Chinese national; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

(L.N. 49 of 2011)

7. The expression “指認人士” is used in the United Nations Sanctions (Somalia) Regulation (Cap. 537 sub. leg. AN) (*Somalia Regulation*).² It is the equivalent of *designated person* in the corresponding English text. In the United Nations Sanctions (Eritrea) Regulation (Cap. 537 sub. leg. AR) (*Eritrea Regulation*), before its amendment by the United Nations Sanctions (Eritrea) (Amendment) Regulation 2013 (L.N.136 of 2013) (*Amendment Regulation*), the term 指明人士 had been used as the Chinese equivalent of *designated person*.³ The Amendment Regulation substituted “指認人士” for it.⁴ This achieved consistency with the Chinese version of the defined term in the Somalia Regulation. Also, as explained below, it conforms to the use of Chinese terms in the relevant UN Resolutions.

2

Chapter: 537AN	Title: United Nations Sanctions (Somalia) Regulation	Gazette Number: L.N. 165 of 2013
Section: 1	Heading: Interpretation	Version Date: 25/10/2013

designated person (指認人士) means a person or an entity designated by the Committee—
(a)-(e)

3

Chapter: 537AR	Title: United Nations Sanctions (Eritrea) Regulation	Gazette Number: L.N. 111 of 2010
Section: 1	Heading: Interpretation	Version Date: 24/09/2010

Caution : This is a past version. See the current version for the latest position.

In this Regulation—

designated person (指明人士) means a person or entity designated by the Committee
(a)-(e);

4

Chapter: 537AR	Title: United Nations Sanctions (Eritrea) Regulation	Gazette Number: L.N. 136 of 2013
Section: 1	Heading: Interpretation	Version Date: 26/07/2013

In this Regulation—

designated person (指認人士) means a person or entity designated by the Committee—
(L.N. 136 of 2013)
(a)-(e);

Chinese text of relevant Resolution

8. The expression “指認”, as the equivalent of “designated”, has been used in the official Chinese text of the Security Council Resolutions imposing sanctions on Somalia and Eritrea.⁵ This was an important factor in the decision to use “指認人士” as the equivalent for *designated person*. Its use (in both the amended Eritrea Regulation and the Somalia Regulation) reflects the wording of the official Chinese text of the relevant Resolution.

No discrepancy between the Chinese terms

9. After the amendment made by the Eritrea Amendment Regulation, there is no discrepancy between the Chinese equivalent of the term *designated person* in the Somalia Regulation and the Eritrea Regulation. When drafting domestic legislation to give effect to instruments such as Conventions, Treaties or Security Council Resolutions, the drafter needs to take into account the terms used in the instrument. As explained above in paragraph 8, the use of “指認人士” for *designated person* reflects the corresponding expressions in the Chinese text of the Resolution.

A “panel of advisory language specialists” for defined terms

10. The Administration has considered the suggestion to set up a panel of advisory language specialists to help ensure that there are no discrepancies between the English and Chinese defined terms. Naturally, to identify any such discrepancies” the specialists will have to compare the Chinese and English texts during the drafting process. Also the terms will have to be considered in context and not in isolation.

Quality assurance measures within Law Drafting Division (“LDD”)

11. The Administration appreciates the Members’ concern that there should be no discrepancies between the defined terms in the two language texts. Our shared objective is that Hong Kong legislation should be of a high quality. The compatibility of the two texts is an integral aspect of this objective and the LDD is vigilant in achieving it.

⁵ UN Sanction Resolution 1907 (2009)

12. LDD aims at ensuring that the whole of the legislative text (including definitions) is so drafted that one text reflects the meaning and legal effect of the other. The drafting of the defined terms are subjected to the same level of rigorous supervision by experienced LDD counsel as the rest of the legislative text.

13. In addition, LDD has put in place a number of quality assurance measures to maintain a high standard in the draft legislation prepared by its counsel.

14. First, LDD has internal guidelines for drafting legislation, including definitions. They are set out in the DoJ publication “Drafting Legislation in Hong Kong—A Guide for Styles and Practices”.

15. Further, committees have been set up within LDD to consider language and other issues relevant to legislative drafting. A subject currently under consideration is the standardisation of terms used in the legislative text (both English and Chinese). One of the committees is dedicated to examining issues concerning the Chinese text, including the standardisation of language usage.

16. LDD is committed to enhancing and developing its counsel’s expertise in bilingual legislative drafting (whether in relation to linguistic or other matters). In addition to internal discussions and training sessions, when the opportunity arises, external scholars and professionals are invited to share their knowledge and to exchange ideas with LDD counsel.

Experience and expertise within LDD

17. There are drafters within LDD who have been engaged in drafting legislation in Chinese from the inception of the project to prepare legislation in both Chinese and English. This experience is unique to LDD and is the foundation for the development of internal expertise in this highly specialised area of the legal profession.

18. Consistency in the use of language is an important factor in making legislation easier to understand. The drafters in LDD, in keeping abreast of the current practices and developing trends in legislative

drafting (whether in Hong Kong or elsewhere), and having direct access to the work of other LDD drafters, are well-positioned to achieve this consistency.

Practical constraints

19. The Administration understands that the proposed panel is to be involved at the drafting stage. Seeking external assistance during the drafting process is quite different from preparing Chinese versions of existing legislation (as was done during the Laws Translation Programme completed in May 1997 at the beginning of the exercise to enact bilingual legislation). Legislative proposals are, in most cases, made public in the form of legislative text only at the stage of publication in the Gazette. Before publication, and particularly at the early stages of drafting, legislative proposals are confidential and subjected to continuous development. The involvement of experts outside the Administration during this process could be a sensitive matter and may present many logistical challenges.

20. As Members are aware, LDD counsel have to keep in view the deadlines imposed by the legislative timetable. This is a crucial factor in determining the pace of the drafting work, supervisory procedures (eg clearance) and clerical checking. LDD's ability to manage the timelines can be severely constrained if external panels are required to vet the legislation before it is finalised.

Conclusion

21. For the reasons that have been given, the Administration considers that it has adopted appropriate measures, and has sufficient experience and expertise, to ensure that there are no discrepancies in the defined terms in the 2 language texts of the legislation prepared by LDD, and that the involvement of an external panel during the drafting process is not practicable and may in fact be counter-productive.

Department of Justice
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