

立法會
Legislative Council

LC Paper No. LS 80/01-02

**Paper for the House Committee Meeting
on 26 April 2002**

**Legal Service Division Report on
United Nations (Anti-Terrorism Measures) Bill**

I. SUMMARY

1. **Objects of the Bill** To implement certain mandatory elements of the United Nations Security Council Resolution 1373 relating to measures for the prevention of terrorism and three recommendations of the Financial Action Task Force on Money Laundering.

2. **Comments**
 - (a) The Bill provides anti-terrorism measures such as specification of terrorists, terrorist associates and terrorist property; freezing of funds; prohibition of activities related to terrorism; disclosure of knowledge or suspicion of terrorist property; and obtaining of evidence and forfeiture of terrorist property.

 - (b) An assessment of whether the proposals are consistent with the human rights provisions of the Basic Law will be made after we have received clarification from the Administration.

3. **Public Consultation** No public consultation has been carried out.

4. **Consultation with LegCo Panel(s)/ Committee(s)** The policy aspects of the Bill were discussed at the meeting of the Panel on Security on 5 February 2002.

5. **Conclusion** As the Bill deals with the important subject of combating terrorism, Members are recommended to form a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To implement -

- (a) the mandatory elements of the United Nations Security Council Resolution 1373 ("the Resolution") relating to measures for the prevention of terrorism as set out in paragraphs 1(a), (b), (c) and (d) and 2(a) of that Resolution; and
- (b) three recommendations of the Financial Action Task Force on Money Laundering ("FATF") relating to terrorist financing.

LegCo Brief Reference

2. SBCR 2/16/1476/74 dated 10 April 2002 issued by the Security Bureau.

Date of First Reading

3. 17 April 2002.

Comments

United Nations Security Council Resolution 1373 and FATF

4. The Resolution was adopted on 28 September 2001 to combat international terrorism. Acting under Chapter VII of the Charter of the United Nations, the Security Council of the United Nations has decided on certain measures to be employed and has called on all member states, including the People's Republic of China, to apply such measures. According to the LegCo Brief, the Central People's Government ("CPG") have, pursuant to Article 13(1) of the Basic Law, given instructions to HKSAR in October 2001 to implement the Resolution. Article 48(8) of the Basic Law provides that the Chief Executive shall implement the directives issued by CPG in respect of the relevant matters provided for in the Basic Law.

5. HKSAR is a member of the FATF. Eight Special Recommendations ("the Recommendations") were made by FATF to combat the financing of terrorism. FATF members are expected to implement the Recommendations by mid-2002.

6. The Bill intends to implement the decisions set out in paragraphs 1(a), (b), (c) and (d) and 2(a) of the Resolution and Recommendations II, III and IV of the Recommendations. The Bill is the first stage of the Administration's plan to implement the requirements of the Resolution and Recommendations. In stage two, the Security Bureau will conduct research into legislative proposals to implement the remaining

elements of the Resolution, to apply other international conventions against terrorism, and to give effect to the remaining parts of the Recommendations.

Specification of persons and property as "terrorists", "terrorist associates" or "terrorist property"

7. Clause 2(1) defines the terms "terrorist", "terrorist act", "terrorist associate" and "terrorist property". The term "terrorist act" is based on the definition of "terrorism" in The Terrorism (United Nations Measures) Order 2001 in the United Kingdom. To be caught by the definition, the use or threat of action must be designed to influence the Government or to intimidate the public or a section of the public, and made for the purpose of advancing a political, religious or ideological cause; and the action must involve serious violence against a person, serious damage to property, endanger life, create a serious risk to the health or safety of the public or be designed seriously to disrupt an essential service, facility or system. A person designated by the Committee of the United Nations Security Council would fall within the meaning of "terrorist associate".

8. Clause 4 empowers the Chief Executive to specify, by notice published in the Gazette, persons and property that the Chief Executive has reasonable grounds to believe are terrorists or terrorist associates or terrorist property. Such notice is not subsidiary legislation. It would be presumed, in the absence of evidence to the contrary, that the persons and property specified in such notice are terrorists, terrorist associates or terrorist property. A notice would, unless revoked, expire on the 3rd anniversary of the date of its publication in the Gazette.

9. Clauses 16 and 17 provide for applications to the Court of First Instance ("the Court") to revoke any notice issued under Clause 4 to the extent that it relates to that person or property. Clause 16(3) sets out the test by which the Court would grant an application. We will assess whether the above proposals are consistent with the human rights provisions of the Basic Law after we have received the Administration's clarification.

Freezing of funds and property

10. Under Clause 5, the Secretary for Security ("the Secretary") may, by notice in writing, direct that funds which the Secretary has reasonable grounds to suspect are terrorist property not to be made available to any person except under the authority of a licence granted by the Secretary. Such notice would, unless revoked, expire on the 3rd anniversary of the date on which it was signed. There is no express requirement for promulgation or service of the notice to the persons concerned. There is also no provision in the Bill setting out the grounds on which and the procedures by which the licence would be granted. Application may be made to the Court under Clauses 16 and 17 to revoke the notice issued by the Secretary.

11. Clause 19 enables the Secretary to make regulations to prohibit persons from dealing with property (other than funds) that the Secretary has reasonable grounds to suspect is terrorist property. Under Clause 19(2), these regulations may provide for

applications to be made to and orders to be made by the Court. The Administration has been asked to supply more details.

12. We will assess whether the proposals on freezing of funds and property are consistent with the property rights provisions of the Basic Law after we have received the Administration's clarification on Clauses 5, 16, 17 and 19.

Prohibitions and requirements

13. A list of the prohibitions and requirements proposed under the Bill is at the Annex. The offences and penalties for contravening these prohibitions or failing to comply with the requirements are set out in Clause 14. We are seeking clarification from the Administration on these proposals so that we may assess the legal effect and advise Members whether they are consistent with the human rights provisions of the Basic Law.

14. The prohibition against making false threats of terrorist acts in Clause 10 is outside the scope of the Resolution and Recommendation. It is stated in the Brief that the policy is "to prevent and deter hoaxes which are likely to cause panic and confusion in densely-populated Hong Kong".

15. The prohibition against supply of funds, making funds and services available, supply of weapons and recruitment of members would, by virtue of Clause 3, apply to any person outside HKSAR who is a Hong Kong permanent resident or who is a body incorporated or constituted under the law of HKSAR. Under Clause 14(11), summary proceedings may be commenced at any time not later than 12 months from the date on which the person charged first enters HKSAR after allegedly committing the offence outside HKSAR.

16. Clause 14(10) provides for personal liability on the part of a director, manager, secretary or other similar officer of a body corporate or any person purporting to act in any such capacity where the body corporate is guilty of any offence and that offence is proved to have been committed with the consent or connivance of such person, or to be attributable to any neglect on his part.

Drug Trafficking and Organized Crimes (Amendment) Bill 2000

17. Similar proposals on dealing with property and disclosure of knowledge or suspicion are being studied by the Bills Committee on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 ("the Related Bill"). The Related Bill proposes to amend sections 25 and 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) in relation to property representing proceeds of drug trafficking and sections 25 and 25A of the Organized and Serious Crimes Ordinance (Cap. 455) in relation to the proceeds of indictable offence. The Bills Committee has decided that discussion on these amendments should not continue until the Administration has completed consultation with relevant professional bodies and the legal profession. It was also suggested that the Bills Committee should make reference to the scrutiny of this Bill when examining the aforesaid amendments under the Related Bill.

Public consultation

18. No public consultation has been carried out.

Consultation with LegCo Panel(s)/Committee(s)

19. At a joint meeting of the LegCo Panels on Security and Administration of Justice and Legal Services on 30 November 2001 where members of the LegCo Panel on Financial Affairs were invited to attend, Members were informed of the need to introduce legislative measures on anti-terrorism to implement the mandatory elements of the Resolution.

20. The LegCo Panel on Security was consulted on the Administration's proposals at the meeting on 5 February 2002. Members expressed various concerns about the definition of "terrorist act", including whether the definition would substantially increase the power of law enforcement agencies, and the proposal to empower the Chief Executive to list terrorists or terrorist organizations and to amend the list through an administrative process. A Member expressed reservations about the direct incorporation of individuals and organizations designated by the Committee of the United Nations Security Council into the initial list of terrorists in Hong Kong. Some Members also expressed concern about whether the legislative proposals would be consistent with the Hong Kong Bill of Rights Ordinance and various international covenants on human rights.

21. Members may wish to refer to the minutes of the two Panel meetings (LC Paper Nos. CB(2) 916/01-02 and CB(2) 1478/01-02) for further details.

Conclusion

22. As the Bill deals with the important subject of combating terrorism, a detailed study of its provisions and their impact is necessary. Members are recommended to set up a Bills Committee to study the Bill.

Encl

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
24 April 2002

Proposed Prohibitions and Requirements

The Bill proposes to -

- (a) prohibit the supply of funds to terrorists and terrorist associates (clause 6);
- (b) prohibit making funds and financial (or related) services available to terrorists and terrorist associates (clause 7);
- (c) prohibit the supply of weapons to terrorists and terrorist associates (clause 8);
- (d) prohibit the recruitment of a person to become a member of or to serve in any capacity with a specified person (clause 9);
- (e) prohibit against false threats of terrorist acts (clause 10);
- (f) require the disclosure of knowledge or suspicion that a property is terrorist property (Clause 11);
- (g) provide for the obtaining of evidence and information and the seizure and detention of property suspected of being terrorist property (clause 12, Schedules 2 and 3); and
- (h) empower the Court of First Instance ("the Court") to order the forfeiture of terrorist property (clause 13).