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Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 2 December 2008**

Anti-terrorism legislation

Purpose

This paper provides background information on anti-terrorism legislation in Hong Kong.

Background

2. The United Nations Security Council Resolution (UNSCR) 1373 passed on 28 September 2001 aims at combatting international terrorism on various fronts, including the prevention and suppression of terrorist financing, criminalising direct, indirect and willful provision or collection of funds, establishing terrorist acts as serious criminal offences in domestic laws with appropriate penalties and enhanced exchange of information and intelligence to fight terrorism. By virtue of Chapter VII of the Charter of the United Nations, UNSCR 1373 is binding on all States. In October 2001, the Central People's Government gave instructions to the Hong Kong Special Administrative Region to implement the resolution.

3. Hong Kong has been an active member of the Financial Action Task Force on Money Laundering (FATF), an international body specialising in recommending standards and best practices in countering money laundering. Following the attacks in the United States on 11 September 2001, FATF made eight Special Recommendations to tackle terrorism financing.

4. Hong Kong did not have any anti-terrorism legislation of general application before 2002. Offences which were typically committed by terrorists or associated with terrorism were however offences against the laws of Hong Kong. These included laws which gave effect to multilateral conventions, bilateral agreements and UNSCRs, and the ordinary criminal laws of Hong Kong. As there were areas of

UNSCR 1373 which the laws of Hong Kong could not cover without new legislative measures, the Administration adopted a two-stage approach to implement the anti-terrorism requirements of UNSCR 1373.

5. In the stage one anti-terrorism legislative exercise, the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) was enacted in July 2002 to give effect to the mandatory elements of UNSCR 1373 and the most pressing FATF Special Recommendations. In the stage two legislative exercise, the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 was passed in July 2004 to give full effect to the requirements of UNSCR 1373 and the FATF Special Recommendations to freeze non-fund terrorist property, and to implement other international conventions relating to terrorism, namely, the United Nations International Convention for the Suppression of Terrorist Bombings, the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the United Nations Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

6. The Panel on Security (the Panel) was consulted on the legislative proposals to implement measures against terrorism and terrorist financing in both stages of the anti-terrorism legislative exercise, prior to the Administration's introduction of the United Nations (Anti-Terrorism Measures) Bill (the Bill) and the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 (the Amendment Bill) into the Legislative Council in April 2002 and May 2003 respectively. This paper summarises issues and concerns raised by members at the relevant meetings of the Panel.

Issues and concerns raised by members

Legislative proposals to implement the United Nations Security Council Resolution 1373

7. At the Panel meeting on 5 February 2002, in the context of discussing the main legislative proposals to implement UNSCR 1373, some members expressed concern about whether the definition of terrorist act as proposed by the Administration would be so wide that innocent persons and non-terrorist associations might fall within the definition, and whether the definition would substantially increase the power of law enforcement agencies. They were also worried that terrorist acts outside Hong Kong would fall within the definition of terrorist act in Hong Kong.

8. The Administration responded that the proposed definition of terrorist act reflected modern day requirements, and was similar to those adopted by other common law jurisdictions. It stressed that the enactment of legislative proposals that would increase the power of law enforcement agencies had always been made under the principle of striking a balance between the protection of personal freedom and human rights, and the safety of the public. The Administration assured the Panel that

it would not seek more power than was necessary.

9. Regarding terrorist acts outside Hong Kong, the Administration explained that although it was unlikely that terrorist acts would be committed in Hong Kong, funds related to terrorists might be found in Hong Kong. It was therefore necessary to include acts outside Hong Kong in the definition of terrorist act. The Administration also informed the Panel that anti-terrorism legislation in most countries had extraterritorial effect.

10. Some members expressed concern about the Administration's proposal to empower the Chief Executive (CE) to list terrorists or terrorist organisations, and also amend the list through an administrative process. These members considered that the listing should be made through a legislative process. Dr Hon Margaret NG expressed reservations about the direct incorporation of individuals and organisations designated under UNSCRs into the initial list of terrorists in Hong Kong.

11. The Administration explained that the proposal was to ensure that the listing of terrorists or terrorist organisations would be conducted expeditiously. CE's power to list individuals or organisations would be subject to the requirement of reasonable grounds to believe that they were connected with any terrorist act as defined in the proposed legislation. The listing would also be subject to appeal. The Administration pointed out that the proposed legislation was directed against financing of terrorist activities. Even if individuals or organisations were listed, they would still have the freedom of association and holding public meetings.

Further measures against terrorism and terrorist financing

12. In discussing the legislative proposals to implement further measures against terrorism and terrorist financing at the Panel meeting on 16 January 2003, Dr Hon Margaret NG was of the view that the stage two anti-terrorism legislative exercise should cover all those issues previously raised by the Bills Committee on the United Nations (Anti-Terrorism Measures) Bill which the Administration had not been able to satisfactorily address because of the need to enact the Bill by the end of the 2001-2002 legislative session. These issues included the following -

- (a) the scope of section 10 of the Ordinance was so wide that it would unnecessarily cover many people who were completely unrelated to terrorist organisations;
- (b) the power in relation to freezing of property other than funds was too wide, having regard to the fact that UNSCR 1373 only stipulated the freezing of funds and other financial assets or economic resources committed or attempted to commit a terrorist act;
- (c) section 12 of the Ordinance, which imposed an obligation on "any person", was at variance with UNSCR 1373 and FATF as neither UNSCR 1373 nor FATF required Hong Kong to make a potential

criminal of every ordinary citizen. FATF only imposed the obligation on "financial institutions, other business or entities subject to anti-money laundering obligations";

- (d) the wide powers of seizure, investigation and detention of authorised officers contained in the United Nations (Anti-Terrorism Measures) Bill, which were deleted in the Committee Stage in response to the concern of the Bills Committee, should be narrowed down and reintroduced by way of an amending bill and not subsidiary legislation; and
- (e) the offence provisions in the Ordinance should be amended as they lacked specific intent, the ingredient of which was essential in criminal offences.

13. Dr Hon Margaret NG, Hon Albert HO and Hon Cyd HO expressed concern that the above outstanding issues in the stage one anti-terrorism legislative exercise had not been addressed by the Administration. They pointed out that the Secretary for Security (S for S) had undertaken to do so during the meetings of the Bills Committee and also at the Council meeting on 10 July 2002 when the Second Reading debate on the Bill was resumed.

14. Hon Cyd HO was of the view that the Administration should review the anti-terrorism measures set out in the Ordinance periodically to ensure that they were in line with the international trend. She pointed out that both Australia and Canada had established a mechanism under which the government would provide statistics on anti-terrorism cases to the parliament. She requested the Administration to find out more about the mechanism and to consider introducing a similar reporting mechanism under the Ordinance.

15. At the Panel meeting on 20 February 2003, the Administration provided a written response (LC Paper CB(2)1113/02-03(03)) to the issues and concerns raised by members as referred to in paragraph 12 above. In addition to setting out the concerns raised in respect of the Ordinance before its passage and how the Administration had addressed the concerns, the paper also provided information on anti-terrorism laws in overseas jurisdictions, including requirements for the Canadian and Australian governments to report to parliaments on statistics on anti-terrorism cases. In the same paper, the Administration undertook to –

- (a) give priority consideration to introducing the Amendment Bill to deal with the freezing of non-fund terrorist property and the provision of enforcement powers;
- (b) enable S for S to delegate the power under section 16(2) of the Ordinance to senior officers of the Security Bureau;
- (c) review anti-terrorism measures set out in the Ordinance periodically to ensure that they were in line with the international trend; and

- (d) include in the Amendment Bill a proposed amendment to section 10 of the Ordinance by improving the language of the provision and providing for the appropriate mens rea.

16. Regarding the compensation provision under the Ordinance, Hon Albert HO requested the Administration to re-consider relaxing the criterion of "serious default" in section 18 of the Ordinance, and to provide a written response before the introduction of the Amendment Bill into LegCo. In its written reply (LC Paper No. CB(2)1971/02-03(01)) of 5 May 2003, the Administration reiterated its view that section 18 was proportionate and reasonable. It also pointed out that anti-terrorism laws in other jurisdictions did not, generally speaking, provide compensation for "wrongful" Government specifications.

Latest development

17. At the Panel meeting on 21 October 2008, S for S advised that some of the provisions in Cap. 575 concerning, for instance, freezing and forfeiture of terrorist property as well as law enforcement power, may only enter into operation when the accompanying rules of court and code of practice are in place. The Administration is finalising these rules of court and code of practice, and intends to consult the Panel before promulgating them. The proposed rules of court and code of practice to be made under the Ordinance will be discussed at the Panel meeting on 2 December 2008.

Relevant papers

18. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

List of relevant documents on anti-terrorism legislation

Date of meeting	Meeting	Document / Paper No.
5.2.2002	Panel on Security	Minutes of meeting (<u>LC Paper No. CB(2)1478/01-02</u>)
		Administration's paper entitled "Legislative Proposals to Implement Anti-terrorism Measures under United Nations Security Council Resolution (UNSCR) 1373" (<u>LC Paper No. CB(2)1021/01-02(01)</u>)
16.1.2003	Panel on Security	Minutes of meeting (<u>LC Paper No. CB(2)1119/02-03</u>)
		Administration's paper entitled "Stage two anti-terrorism legislative exercise - United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003" (<u>LC Paper No. CB(2)846/02-03(03)</u>)
		Administration's paper entitled "Review of compensation provision under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)" (<u>LC Paper No. CB(2)846/02-03(04)</u>)
20.2.2003	Panel on Security	Minutes of meeting (<u>LC Paper No. CB(2)1451/02-03</u>)
		Paper provided by the Administration setting out its response to the issues raised by members at the meeting on 16 January 2003 (<u>LC Paper No. CB(2)1113/02-03(03)</u>)
		Administration's response on the review of compensation provision under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (<u>LC Paper No. CB(2)1971/02-03(01)</u>)
10.7.2002	Legislative Council	Report of the Bills Committee on United Nations (Anti-Terrorism Measures) Bill to the Legislative Council on 10 July 2002 (<u>LC Paper No. CB(2)2537/01-02</u>)
30.6.2004	Legislative Council	Report of the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 to the Legislative Council on 30 June 2004 (<u>LC Paper No. CB(2)2915/03-04</u>)
21.10.2008	Panel on Security	Administration's paper on policy initiatives of the Security Bureau in the 2008-2009 Policy Agenda (<u>LC Paper No. CB(2)66/08-09(01)</u>)