

立法會

Legislative Council

LC Paper No. CB(2)121/09-10(06)

Ref : CB2/SS/1/09

Subcommittee on Rules of the High Court (Amendment) Rules 2009

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives an account of the past discussions by the Panel on Security (the Panel) on the rules of court to be made for the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance).

Background

2. A two-stage approach was adopted by the Administration in enacting legislation to implement relevant international requirements on the Hong Kong Special Administrative Region regarding anti-terrorism. In stage one, Cap. 575 was enacted in July 2002 to give effect to the mandatory elements of United Nations Security Council Resolution (UNSCR) 1373 and the most pressing Special Recommendations of the Financial Action Task Force on Money Laundering (FATF). In stage two, the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 (the Amendment Ordinance) was enacted in July 2004 to amend Cap. 575 to -

- (a) give full effect to the requirements of UNSCR 1373;
- (b) implement the FATF Special Recommendations on freezing non-fund terrorist property; and
- (c) implement other international covenants against terrorism, namely, the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

3. The following sections of the Ordinance (as amended by the Amendment Ordinance) will take effect after the making of rules of court to provide the procedural matters involved -

- (a) *section 5* empowering the Court of First Instance (CFI) by order to specify terrorists, terrorist associates and terrorist property not designated by the United Nations. Section 5(9) specifies that an application to the CFI shall be made inter partes except where the application falls within the circumstances specified in rules of court made for section 5;
- (b) *section 6* empowering the Secretary for Security (S for S) to freeze suspected terrorist property. Section 6(1) provides that S for S may direct that a person shall not deal with the frozen property except under the authority of a licence granted by S for S;
- (c) *section 8* prohibiting the making of any funds or financial services available to or for the benefit of terrorists or terrorist associates except under the authority of a licence granted by S for S;
- (d) *sections 12A to 12E* providing for various powers of investigation;
- (e) *sections 12F to 12J* providing for the seizure and detention of property suspected to be terrorist property;
- (f) *section 13* empowering the CFI to order the forfeiture of terrorist property representing proceeds arising from a terrorist act, or which was or intended to be used to finance or otherwise assist the commission of a terrorist act;
- (g) *section 14* relating to the offences and penalties of contravening sections 6 and 12A to 12G;
- (h) *section 15* on the supplementary provisions applicable to the licences in section 6(1) or 8;
- (i) *section 17* providing for applications to the CFI to revoke an order made under section 5 or a freezing notice issued under section 6, or to grant or vary a licence mentioned in section 6(1) or 8;
- (j) *section 18* on compensation that the CFI may order the Government to pay to an affected party under specified circumstances; and
- (k) *section 18A* preserving the common law remedies for an affected person.

4. Section 20(1) of the Ordinance stipulates that provision may be made by rules of court with respect to applications made under section 5, 13, 17 or 18, and the circumstances in which applications mentioned in these sections should be made ex parte. Section 20(2) of the Ordinance specifies that rules of court shall provide for applications for the revocation or variation of an order under section 12A or 12B, and may provide for proceedings relating to sections 12A to 12C.

Past discussions

5. The Administration briefed the Panel on the proposed rules of court to be made to Cap. 575 on 2 December 2008. Members noted that the rules of court mentioned in section 20 of Cap. 575 and the rules necessary for applications under sections 12G and 12H of Cap. 575 were to be made by the Rules Committee of the High Court (the Rules Committee). In essence, these rules provided for the procedural matters in making the relevant applications to the CFI, including the type of summons to be used for commencing the relevant proceedings in different circumstances; the timeframe for serving the summons, affidavit and order, as applicable; and to whom such documents should be served. Members further noted that in drawing up the proposed court rules, the Administration had taken into account comments from the Rules Committee, including the need to bring the mode of commencement of proceedings under the new court rules in line with the recommendations in the Final Report on Civil Justice Reform.

6. Dr Hon Margaret NG and Hon Cyd HO expressed reservation about supporting the proposed rules of law, as the Administration had not dealt with the outstanding issues of enacting the Ordinance. These included -

- (a) 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 Special Recommendation IV only imposed the obligation on "financial institutions, other business or entities subject to anti-money laundering obligations";
- (b) powers of investigation, seizure and detention of property suspected to be terrorist property were too wide and should be narrowed down; and
- (c) offence provisions in the Ordinance lacked specific intent, the ingredient of which was essential in criminal offences.

Relevant papers

7. Members are invited to access the Legislative Council's website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meeting.