

立法會

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Subcommittee on Proposed Resolution under Section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarizes the past discussions by the Panel on Security (the Panel) on the code of practice to be made under 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 2002 to give effect to the mandatory elements of the 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 passed in 2004 to amend Cap. 575 to -

- (a) give full effect to the requirements of UNSCR 1373 on anti-terrorism;
- (b) implement the FATF Special Recommendations on combating the financing of terrorism; and
- (c) implement other international conventions 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. Section 12A of the Ordinance, as added by the Amendment Ordinance, provides that the Secretary for Justice may make an application to the Court of First Instance for an order to require the relevant persons to answer questions, furnish

information or produce materials relevant to the investigation of an offence under the Ordinance. Section 12A(14) requires the Secretary for Security to prepare a code of practice in connection with the exercise of the powers and the discharge of the duties under section 12A. This code shall be laid before the Legislative Council (LegCo) and shall only be promulgated after it has been approved by LegCo.

4. The main provisions in the code of practice seek to set out -
 - (a) the procedures for the interviews of persons subject to an order under section 12A of the Ordinance who are required to answer questions or otherwise furnish information;
 - (b) the guidelines for the production of material under section 12A of the Ordinance; and
 - (c) the complaint procedures for persons subject to an order under section 12A of the Ordinance.

Discussions by the Panel on Security

5. The Administration briefed the Panel on the proposed code of practice to be made under the Ordinance on 2 December 2008.

6. Some members expressed concern about the rights of interviewees under the code. These members held the view that the provisions therein should be made more flexible to the interviewees, with a view to soliciting greater cooperation from the interviewees. For example, the Administration should state clearly in the code as to whether the interviewee was allowed to make further phone calls in the event that he could not get in touch with the person to whom he wished to talk.

7. The Administration advised that during an interview, an interviewee would be allowed to make one telephone call. There was no restriction on the duration of the call, as long as it was reasonable. This arrangement was applicable to all interviewees. The Administration also advised that it noted the views of members that an interview should be conducted in a non-confrontational manner to avoid any possible adverse impact on the interviewee.

8. Some members considered the provisions in the draft code of practice far from adequate to protect the interviewees' rights. They pointed out that the code did not explicitly state the reasons why the interviewees could only make one telephone call during the interview and the allowable ceiling on the duration of call. The code also did not state whether and how follow-up actions would be taken in the event that a person subject to a section 12A order complained that the provisions of the code had not been complied with.

9. The Administration responded that it would take into account members' views and concerns about the rights of interviewees in making telephone calls and actively explore whether improvement measures could be made before finalizing the code of practice under the Ordinance.

10. Hon James TO noted that section 3 of the Organized and Serious Crimes Ordinance (Cap. 455) conferred similar powers of investigation as those provided under section 12A of Cap. 575 on the law enforcement agencies with regard to organized crimes under Cap. 455, and the exercise of such powers was governed by a code of practice promulgated under section 3(19) of Cap. 455. He requested the Administration to provide further information explaining whether and how the code of practice under Cap. 455 would be updated to ensure procedural consistency with the code of practice to be made under Cap. 575. The Administration's response is still awaited.

Relevant papers

11. Members may wish to refer to the following minutes and paper for further details -

- (a) minutes of the meeting of the Panel on Security on 2 December 2008 (LC Paper No. CB(2)738/08-09); and
- (b) Administration's paper entitled "Proposed Rules of Court and Code of Practice to be made for the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)" (LC Paper No. CB(2)347/08-09(07)).

12. The above papers are also available on the website of LegCo (<http://www.legco.gov.hk>).