

立法會
Legislative Council

LC Paper No. CB(4)155/11-12
(These minutes have been seen
by the Administration)

Ref : CB4/BC/1/11

Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012

Minutes of the first meeting
held on Tuesday, 20 March 2012, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Cyd HO Sau-lan
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP

Public Officers attending : Item II

Ms Carol YIP Man-kuen
Deputy Secretary for Security 1

Mr David LAU Kam-kuen
Principal Assistant Secretary for Security A

Ms Leonora IP Wan-yok
Senior Assistant Law Draftsman
Department of Justice

Clerk in attendance : Ms Miranda HON
Chief Council Secretary (4)2

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Ian CHOW
Council Secretary (2)1

Ms Carmen HO
Senior Legislative Assistant (4)2

Action

I. Election of Chairman

Mr LAU Kong-wah was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[Legislative Council Brief: File Ref: SBCR 9/16/1476/74, LC Paper Nos. CB(3)468/11-12, LS34/11-12 and CB(4)139/11-12(02) to (05)]

2. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Admin

3. The Administration was requested to provide -

(a) the full text of the United Nations International Convention for the Suppression of the Financing of Terrorism, the United Nations Security Council Resolution 1373, and the Special Recommendations of the Financial Action Task Force on Money Laundering ("FATF");

(Post-meeting note : A copy of the United Nations Security Council Resolution 1373, the Special Recommendations of FATF and the United Nations International Convention for the Suppression of the Financing of Terrorism was forwarded to the Secretariat on 21 March 2012.)

(b) the name(s) of the public officer(s) who decided not to promptly introduce legislative proposals to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") to implement all the recommendations of the 2008 Mutual Evaluation Report on Hong Kong ("the Report") which were necessary for removing Hong Kong

Action

from FATF's follow-up process, after the publication of the Report by FATF and the Asia/Pacific Group on Money Laundering in 2008;

- (c) a comparison of the scope of coverage of the definition of "funds" in section 2(1) of, and Schedule 1 to, UNATMO with that of "property" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);
- (d) in relation to the concern that the coverage of the proposed section 8 of UNATMO might be too wide, a response to the following enquiries:
 - (i) how a person could fulfil his obligation to pay off a debt he owed to his creditor who had become an alleged "terrorist or terrorist associate" without violating the proposed section 8; whether the person, by paying off the debt, would be regarded as "knowing" that, or being "reckless" as to whether, his creditor was a "terrorist or terrorist associate";
 - (ii) whether the giving of a bowl of rice, a blanket or overnight accommodation (i.e. a licence to occupy premises), which might be regarded as "property" but not "funds", to a terrorist without first obtaining a licence from the Secretary for Security would be unlawful under the proposed section 8(a), whereas the same act would not be unlawful under the existing section 8; and
 - (iii) what arrangements were in place in overseas jurisdictions for dealing with the situations referred to in (i) and (ii) above;
- (e) an explanation of the reason why the proposed section 8 provided for the grant of a licence for making property or financial (or related) services available (proposed section 8(a) referred), but not for collecting property or soliciting financial (or related) services (proposed section 8(b) referred); whether the collection of reasonable legal expenses (or the solicitation of legal services) for an alleged "terrorist or terrorist associate" would be unlawful under the proposed section 8(b); whether provision of the grant of a licence could be added to the proposed section 8(b); whether

Action

legislation in overseas jurisdictions provided for exceptions/exemptions in relation to the collection of property and/or the solicitation of services; and

- (f) a clarification of whether, for the purposes of UNATMO, "property" was intended to include "money, goods, choses in action and land" situated outside Hong Kong, and if so, whether UNATMO should include a definition of "property" similar to that in Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) to specifically refer to property "whether in Hong Kong or elsewhere".

Clerk

4. Members requested the Secretariat to circulate for their information the previous discussions relating to the definition of "funds" and "property" during the examination of the relevant bills.

(Post-meeting note : The relevant extracts of discussions were circulated to members vide LC Paper No. CB(4)151/11-12 on 30 March 2012.)

Clerk

5. Members agreed to invite the two legal professional bodies and relevant human rights bodies to give written submissions on the Bill and to make oral presentation if they wished.

(Post-meeting note : The Hong Kong Bar Association, The Law Society of Hong Kong, the Society for Community Organization and the Hong Kong Human Rights Monitor were invited to give written submissions and make oral presentation on 27 March 2012.)

III. Date of next meeting

Clerk

6. Members agreed to hold the next meeting on 16 April 2012 at 8:30 am. The Chairman requested the clerk to identify some time slots for the Bills Committee's meetings and for meeting with deputations.

7. The meeting ended at 4:12 pm.

Council Business Division 4
Legislative Council Secretariat
12 April 2012

**Proceedings of the first meeting of the
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012
on Tuesday, 20 March 2012, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject	Action Required
000000 - 000254	Dr Margaret NG Mr WONG Kwok-kin Mrs Sophie LEUNG Mr LAU Kong-wah	Election of Chairman	
000255 - 000924	Chairman Administration	Briefing by the Administration on the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 ("the Bill")	
000925 - 002032	Chairman Mr James TO Administration	<p>Mr James TO queried why the Administration did not promptly introduce legislative proposals to amend the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO") (Cap. 575) to implement all the recommendations of the 2008 Mutual Evaluation Report on Hong Kong ("the Report") which were necessary for removing Hong Kong from the follow-up process of the Financial Action Task Force on Money Laundering ("FATF"), after the publication of the Report by FATF and the Asia/Pacific Group on Money Laundering in 2008.</p> <p>Mr TO said that the Administration should have introduced the Bill earlier so as to allow sufficient time for the Legislative Council ("LegCo") to examine it, instead of introducing the Bill in Feb 2012, leaving only a few months before June 2012, i.e. the deadline for Hong Kong to address the major deficiencies identified in the Report. He requested the Administration to provide the name(s) of the public officer(s) who decided not to promptly introduce the Bill.</p> <p>The Administration responded that -</p> <p>(a) although UNATMO was enacted in 2002, it did not come into full operation until 1 January 2011 because certain subsidiary legislation had to be made first, including the Rules of the High Court (Amendment) Rules 2009 ("the Amendment Rules") and a code of practice ("the Code"). The scrutiny of the Amendment Rules was completed in December 2009 and the Code was passed in</p>	Admin (paragraph 3(b) of the minutes refers)

Time marker	Speaker	Subject	Action Required
		<p>July 2010. The Administration's priority in the past few years was to bring all the provisions of UNATMO into full operation;</p> <p>(b) the Report required Hong Kong to adopt the definition of "funds" as required under the relevant FATF recommendation, which was the same as the one stipulated in the United Nations International Convention for the Suppression of the Financing of Terrorism ("the TF Convention"). The TF Convention, however, was only applicable to Hong Kong in May 2006 pursuant to the Central People's Government's decision made in April 2006. Hence, the Administration introduced the Bill to implement the recommendations of the Report, including amending the definition of "funds" in UNATMO; and</p> <p>(c) the Security Bureau, the Department of Justice, the Financial Services and the Treasury Bureau ("FSTB"), etc. were involved in the preparation of the Bill.</p>	
002033 - 003451	<p>Chairman Dr Margaret NG Administration Mrs Sophie LEUNG Mr James TO</p>	<p>Dr Margaret NG said that in introducing the United Nations (Anti-Terrorism Measures) Bill in 2002 and the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003, the Administration had advised LegCo that Hong Kong would be able to fulfil its international obligations in relation to anti-terrorism after the two bills were passed. She was dissatisfied that the Administration now informed LegCo that Hong Kong still needed to implement outstanding recommendations of the Report in order to seek FATF's agreement to remove Hong Kong from its follow-up process.</p> <p>The Administration explained that UNATMO was enacted in 2002, which was long before the publication of the Report in July 2008.</p> <p>Mr James TO also expressed dissatisfaction that the Administration introduced the Amendment Rules and the Code prior to the Bill. He pointed out that Members needed to consider whether the proposed amendments in the Bill had any impact on the Amendment Rules and the Code. He commented that the Administration</p>	

Time marker	Speaker	Subject	Action Required
		<p>should have introduced the Bill first to enable Members to scrutinize the relevant legislative proposals in a comprehensive perspective.</p>	
<p>003452 - 004941</p>	<p>Chairman Dr Margaret NG Mr James TO Administration</p>	<p>Dr Margaret NG recalled that in examining the United Nations (Anti-Terrorism Measures) Bill and the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003, the relevant Bills Committees had discussed the definitions of "funds" and "property" and the broad power of the Secretary for Security to freeze funds as stipulated in section 6 of UNATMO.</p> <p>Dr NG and Mr James TO requested the Clerk to circulate for members' information the previous discussions relating to the definition of "funds" and "property" during the examination of the two Bills.</p> <p>Mr TO was concerned that the coverage of "property" as defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO") was too wide as compared to that of "funds" in section 2(1) of, and Schedule 1 to, UNATMO.</p> <p>The Administration responded that -</p> <p>(a) UNATMO was enacted in 2002 to fulfil Hong Kong's international obligations to combat acts of terrorism and terrorist financing under Resolution 1373 passed by the United Nations Security Council ("UNSCR 1373") after the 11 September 2001 attacks. However, there was no definition of "funds" in UNSCR 1373. The Administration at that time made reference to the definition of "funds" under the relevant law in the United Kingdom; and</p> <p>(b) the Bill aimed at addressing the recommendation of the Report to expand the scope of coverage of "funds" in UNATMO. Hence, the Administration proposed that the term "funds" be replaced by "property" throughout UNATMO. The term "property" was defined in IGCO.</p>	<p>Clerk (paragraph 4 of the minutes refers)</p>

Time marker	Speaker	Subject	Action Required
004942 - 010032	Chairman Mr James TO Administration ALA3 Dr Margaret NG	<p>Mr James TO requested the Administration to provide a comparison of the scope of coverage of the definition of "funds" in section 2(1) of, and Schedule 1 to, UNATMO with that of "property" in section 3 of IGCO.</p> <p>The Administration explained that the major difference was that "property" included immovable assets such as land. The TF Convention defined "funds" as "assets of every kind, whether tangible or intangible, movable or immovable". The term "property" as defined in IGCO was wide enough to cover assets of every kind.</p> <p>Mr TO asked whether it was correct that it would not be an offence under the existing UNATMO if a person gave a lunchbox to a terrorist, but it would be an offence under the proposed UNATMO (as amended by the Bill). Dr Margaret NG commented that a lunchbox would be classified as "property" but not "funds".</p> <p>ALA3 said that a lunchbox could be regarded as "goods" under the definition of "property" in IGCO. He pointed out that the definition of "funds" under the TF Convention was "assets of every kind, whether tangible or intangible, movable or immovable", which covered all kinds of property and should be similar to the definition of "property" in IGCO. He further said that the definition of "funds" under section 2 of UNATMO included, but was not limited to, funds mentioned in Schedule 1 to UNATMO.</p> <p>The Administration agreed that the definition of "property" under IGCO was wider than that of "funds" under UNATMO. However, under the proposed section 7 of UNATMO, for example, a person would commit an offence only when he had the intention that or knew that the relevant property would be used to commit terrorist acts.</p>	Admin (paragraph 3(c) of the minutes refers)
010033 - 010654	Chairman Ms Cyd HO Administration	Ms Cyd HO requested the Administration to provide the full text of the TF Convention, UNSCR 1373, and the Special Recommendations of FATF.	Admin (paragraph 3(a) of the minutes refers)

Time marker	Speaker	Subject	Action Required
010655 - 011322	Chairman Mr James TO Administration	<p>Mr James TO was concerned that the coverage of the proposed section 8 of UNATMO might be too wide. He requested the Administration to provide a response to the following enquiries -</p> <p>(i) how a person could fulfil his obligation to pay off a debt he owed to his creditor who had become an alleged "terrorist or terrorist associate" without violating the proposed section 8; whether the person, by paying off the debt, would be regarded as "knowing" that, or being "reckless" as to whether, his creditor was a "terrorist or terrorist associate";</p> <p>(ii) whether the giving of a bowl of rice, a blanket or overnight accommodation (i.e. a licence to occupy premises), which might be regarded as "property" but not "funds", to a terrorist without first obtaining a licence from the Secretary for Security would be unlawful under the proposed section 8(a), whereas the same act would not be unlawful under the existing section 8; and</p> <p>(iii) what arrangements were in place in overseas jurisdictions for dealing with the situations referred to in (i) and (ii) above.</p>	Admin (paragraph 3(d) of the minutes refers)
011323 - 011954	Chairman Dr Margaret NG Administration ALA3	<p>Dr Margaret NG enquired why the term "funds" was used in the heading of the existing section 6 of UNATMO but the term "property" was used throughout the clauses under that section.</p> <p>The Administration explained that during the previous amendment of UNATMO, the term "funds" should be replaced by "property" throughout section 6. However, the heading of section 6 remained unchanged inadvertently, and this would be rectified by the Bill.</p>	
011955 - 013414	Chairman Mr James TO Administration Dr Margaret NG	<p>Mr James TO asked why the proposed section 8 provided for the grant of a licence for making property or financial (or related) services available (proposed section 8(a) referred), but not for -</p> <p>(a) collecting property or soliciting financial (or related) services (the proposed section 8(b) referred); and</p>	Admin (paragraph 3(e) of the minutes refers)

Time marker	Speaker	Subject	Action Required
		<p>(b) providing or collecting property to commit terrorist acts (the proposed section 7 referred).</p> <p>Mr TO also asked under what circumstances such a licence would be granted.</p> <p>The Administration responded that -</p> <p>(a) the proposed sections 7 and 8(b) involved serious crimes with a clear intention to commit an offence in relation to terrorist acts, or an active act of collecting property or solicitation of financial (or related) services to or for the benefit of a terrorist or terrorist associate. Hence, there was no provision for the grant of a licence in these sections. In fact, the existing section 7 did not have any exception/exemption provision; and</p> <p>(b) under section 15 of UNATMO, exceptions might relate, but were not limited to, reasonable living expenses, reasonable legal expenses, and payments liable to be made under the Employment Ordinance (Cap. 57).</p> <p>Mr TO expressed concern as to whether the collection of reasonable legal expenses (or the solicitation of legal services) for a person to appeal against the allegation of being a terrorist or terrorist associate would be unlawful under the proposed section 8(b), and whether the provision of the grant of a licence could be added to that section. He also asked whether legislation in overseas jurisdictions provided for exceptions/exemptions in relation to the collection of property and/or the solicitation of services.</p> <p>The Administration advised that the United Nations Security Council had a world-wide list of terrorists, which would be gazetted in Hong Kong with the approval of the Chief Executive.</p>	<p>Admin (paragraph 3(e) of the minutes refers)</p>

Time marker	Speaker	Subject	Action Required
013415 - 013929	Chairman ALA3 Administration Dr Margaret NG	<p>ALA3 and Dr Margaret NG requested the Administration to clarify whether, for the purposes of UNATMO, "property" was intended to include "money, goods, choses in action and land" situated outside Hong Kong, and if so, whether UNATMO should include a definition of "property" similar to that in Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLCTFO") to specifically refer to property "whether in Hong Kong or elsewhere".</p> <p>The Administration explained that the existing section 3 of UNATMO stipulated that certain provisions of UNATMO would apply outside Hong Kong. To combat global money laundering and terrorist financing, and after consultation with FSTB, the definition of "property" in Schedule 1 to AMLCTFO followed that under the Securities and Futures Ordinance (Cap. 571), to specifically refer to property "whether in Hong Kong or elsewhere".</p> <p>Dr Margaret NG said that the extra-territorial effect provided in section 3 of UNATMO did not concern whether a property was located in Hong Kong or elsewhere.</p> <p>The Administration undertook to provide a written response.</p>	Admin (paragraph 3(f) of the minutes refers)
013930 - 014225	Chairman Administration Dr Margaret NG Ms Cyd HO Mrs Sophie LEUNG	<p>Date of next meeting</p> <p>Invitation of public views on the Bill</p>	Clerk (paragraph 5 of the minutes refers)