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

**Background brief prepared by
the Legislative Council Secretariat**

Purpose

This paper provides background information on the Administration's proposal to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") to implement two outstanding recommendations of the Financial Action Task Force on Money Laundering ("FATF") as set out in its 2008 Mutual Evaluation Report on Hong Kong ("the Report"), and summarizes the past discussions of the Panel on Security ("the Panel") on the Administration's proposal.

Background

Need to implement the two outstanding recommendations of FATF

2. The United Nations Security Council Resolution ("UNSCR") 1373 was passed on 28 September 2001 after the terrorist attacks on the United States on 11 September 2001. It aims at combating international terrorism on various fronts, including the prevention and suppression of terrorist financing, criminalizing direct, indirect and wilful 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 Member 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 is a member of FATF, which is an international body specializing in recommending standards and best practices in countering money

laundering. FATF has published a set of internationally recognized standards to cover the issues of anti-money laundering ("AML") and counter financing of terrorism ("CFT"), known as the "40 + 9 Recommendations".

4. In 2008, FATF completed the Report on Hong Kong's compliance with its recommendations in countering money laundering and terrorist financing. While recognizing the strengths of Hong Kong's AML and CFT regime, the Report made a series of recommendations to improve Hong Kong's compliance of FATF's recommendations.

5. Specifically, the Report concluded that Hong Kong needs to effectively implement legislative measures to address certain key deficiencies in the AML/CFT regime, including improvement to compliance with two major recommendations, i.e. the requirement to criminalize the financing of terrorism, terrorist acts and terrorist organizations, and the full implementation of the requirements of the United Nations on counter-terrorist financing. As informed by the Administration, Hong Kong's major trading partners, including the United Kingdom, the United States, Singapore, Canada, Australia, etc. have complied with these two major recommendations.

6. On the basis of the Report, FATF resolved that Hong Kong should be put on a follow-up process and be required to report to FATF on a regular basis on the improvement actions taken or planned. According to FATF's procedures, Hong Kong is expected to have addressed the above major deficiencies identified in the Report and seek FATF's agreement to remove Hong Kong from the follow-up process not later than four years after the Report, i.e. by June 2012. If Hong Kong fails to seek removal from the follow-up process within a reasonable period due to absence of substantial improvements, FATF may tighten scrutiny and monitoring on Hong Kong which could affect Hong Kong's status as an international financial centre. Hong Kong's commitment and ability to address the key deficiencies would be crucial for the removal from FATF's follow-up process.

7. In order to address the deficiencies identified by FATF in the Report, the Administration proposes the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 to amend UNATMO in the following three main areas -

- (a) expanding the definition of "terrorist act" to cover acts intended to coerce international organizations;
- (b) broadening the scope of prohibited terrorist financing from acts involving "funds" to those involving "property" of every kind; and

- (c) creating a new offence of collecting property or soliciting financial (or related) services for terrorists or terrorist associates.

Previous legislative proposals on measures against terrorism and terrorist financing

Ordinances

8. 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.

9. In stage one, the Administration introduced the United Nations (Anti-Terrorism Measures) Bill ("the Bill") into the Legislative Council ("LegCo") on 17 April 2002 to give effect to the mandatory elements of UNSCR 1373 and the most pressing FATF Special Recommendations. A Bills Committee was formed to study the Bill which was passed at the Council meeting of 12 July 2002, hence the enactment of UNATMO.

10. In stage two, the Administration introduced into LegCo the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 ("the Amendment Bill") on 21 May 2003, which sought to implement relevant international conventions against terrorism (i.e. 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), and to provide for the Secretary for Security ("S for S") to effectively freeze terrorist assets which were not funds. A Bills Committee was formed to study the Amendment Bill which was passed at the Council meeting of 30 June 2004, hence the enactment of the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 ("the Amendment Ordinance").

Rules of the High Court (Amendment) Rules 2009

11. The following provisions in UNATMO (as amended by the Amendment Ordinance) could only take effect after the making of rules of court to provide for the procedural matters involved -

- (a) sections 5, 6, 8, 13, 17 and 18 which provide for matters relating to specification of persons and property as terrorists, terrorist associates or terrorist property, freezing of funds, forfeiture of terrorist property and compensation for wrongful specification of terrorists and terrorist property; and
- (b) sections 12A, 12B, 12C, 12G and 12H which empowers the Court of First Instance ("CFI") to make orders relating to production of documents and material, search of premises and seizure of terrorist property.

12. On 9 October 2009, the Rules of the High Court (Amendment) Rules 2009 ("the Amendment Rules"), made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) and section 20 of UNATMO, were gazetted. In essence, those rules provided for the procedural matters in making the relevant applications to 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. The Amendment Rules were subsidiary legislation subject to the negative vetting procedure. A subcommittee was formed to study the Amendment Rules. At the Council meeting of 2 December 2009, a motion moved by the Chairman of the Subcommittee to repeal the Amendment Rules was negatived.

Code of practice

13. Section 12A of UNATMO provides that the Secretary for Justice may make an application to CFI for an order to require the relevant persons to answer questions, furnish information or produce material relevant to the investigation of an offence under UNATMO. Section 12A(14) requires S for S to prepare a code of practice ("the Code") in connection with the exercise of the powers and the discharge of the duties under section 12A. The Code was required to be laid before LegCo.

14. S for S subsequently gave notice to move a motion to seek the Council's approval of the Code under section 12A of UNATMO. In essence, the Code regulated the manner in which the law enforcement agencies conducted its interviews with persons who were required to answer questions, furnish information or produce material. It also set out the rights of the interviewees. A subcommittee was formed to study the Code which was passed at the Council meeting of 7 July 2010.

Discussions by the Panel on Security

15. The Administration briefed the Panel on its proposal to amend UNATMO to implement the two outstanding recommendations of FATF at the Panel meeting on 7 November 2011.

16. Some members were concerned about the consequence and impact on Hong Kong of not complying with FATF's recommendations as set out in the Report.

17. The Administration advised that although there was no sanction for non-compliance with the recommendations of the Report, it would have negative impact on the financial sector arising from a lack of confidence in the ability of Hong Kong to combat terrorist acts.

18. Members also requested the Administration to provide the following information in the LegCo Brief on the bill to be introduced into LegCo -

- (a) explanation with examples of the purpose of its proposed amendments to UNATMO;
- (b) a response to the question of whether a nation's casting of a vote at the United Nations that caused massive deaths or injury in another country would fall within the proposed expanded definition of "terrorist act"; and
- (c) examples of non-compliance by other Member States with the recommendations of FATF and the consequences of such non-compliance.

Relevant papers

19. A list of the relevant papers which are available on the LegCo website is in the **Appendix**.

Appendix

List of relevant documents on the United Nations (Anti-Terrorism Measures) Ordinance

Committee	Date of meeting	Paper
Panel on Security	5.2.2002 (Item I)	<u>Agenda</u> <u>Minutes</u>
Panel on Security	16.1.2003 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Security	20.2.2003 (Item III)	<u>Agenda</u> <u>Minutes</u>
Bills Committee on United Nations (Anti-Terrorism Measures) Bill		<u>Report of the Bills Committee to the Legislative Council</u>
Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003		<u>Report of the Bills Committee to the Legislative Council</u>
Panel on Security	2.12.2008 (Item VI)	<u>Agenda</u> <u>Minutes</u>
Subcommittee on Rules of the High Court (Amendment) Rules 2009		<u>Report of the Subcommittee to the House Committee</u>
Subcommittee on Proposed Resolution under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)		<u>Report of the Subcommittee to the House Committee</u>

Committee	Date of meeting	Paper
Panel on Security	7.11.2011 (Item VII)	<u>Agenda</u> <u>Minutes</u>

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