

**Bills Committee on United Nations
(Anti-Terrorism Measures) (Amendment) Bill 2003**

**Consolidated list of follow-up actions arising from previous meetings
(as at 24 February 2004)**

Date of meeting	List of follow-up actions	Administration's response
10 October 2003	<p>(1) To provide a table setting out -</p> <p>(a) The obligations imposed on the Hong Kong Special Administrative Region (HKSAR) by the United Nations International Convention for the Suppression of Terrorist Bombings (the Bombings Convention), the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Maritime Safety Convention) and the United Nations Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the Protocol);</p> <p>(b) Existing legislation giving effect to those obligations; and</p> <p>(c) Proposals under the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 (the Amendment Bill). If a certain obligation was covered by existing domestic legislation, the reason(s) for making new provision to implement such an obligation.</p> <p>(2) To provide information on a recent court case enforcing the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).</p> <p>(3) To provide a written response on the following issues -</p> <p>(a) The legal effect of the proposed Orders, and whether the</p>	<p>Administration's response issued for the meeting on 3 November 2003 [CB(2)204/03-04(01)]</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>

	<p>wordings of the Bombings Convention and the Maritime Safety Convention and its Protocol would create problems in interpretation;</p> <p>(b) What was the reason for proposing legislative measures prior to the application of the Maritime Safety Convention and its Protocol to the HKSAR;</p> <p>(c) What was the reason for the way the long title of the Amendment Bill was written, and whether such an arrangement would restrict amendments to the Bill, and, if so, how;</p> <p>(d) How frequent would the HKSAR need to report to the United Nations on the implementation of the United Nations Security Council Resolution 1373; and</p> <p>(e) Whether it was the policy intent for the proposed new section 11F to apply to fixed platforms in disputed territorial waters.</p>	<p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>
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Date of meeting	List of follow-up actions	Administration's response
3 November 2003	<p>(1) To provide a written response to the issues raised by some members of the Bills Committee on the United Nations (Anti-Terrorism Measures) Bill at the meeting of the Panel on Security on 13 February 2003 (LC Paper No. CB(2)1113/02-03(04)).</p> <p>(2) To provide a written response on the following issues -</p> <p>(a) What were the reason(s) for prosecuting a person with previous records of psychiatric treatment under section 11 of the United Nations (Anti-Terrorism Measures) Ordinance;</p> <p>(b) What were the reason(s) for giving the Secretary for Security the power to freeze property other than funds on the basis that he had reasonable grounds to suspect that it was terrorist property without any court intervention;</p> <p>(c) What were the reason(s) for allowing the law enforcement agencies to apply to a magistrate for a warrant under new section 12G when it was suspected that an offence is about to be committed, whereas the law enforcement agencies had to apply to the Court of First Instance for a warrant under new section 12C when it was suspected that an offence had been committed;</p> <p>(d) How many bills introduced into the Council in recent years had adopted the way the long title of this Bill was written; if so, what were they; and</p> <p>(e) Information on a newspaper cutting.</p>	<p>Administration's response issued for the meeting on 12 November 2003 [CB(2)294/03-04(01)]</p> <p>Administration's response issued for the meeting on 12 November 2003 [CB(2)204/03-04(02)]</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>

Date of meeting	List of follow-up actions	Administration's response
12 November 2003	<p>To provide a written response on the following -</p> <ul style="list-style-type: none"> (a) Whether section 11(2) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance") could be covered by the general law; if so, what was the general law and whether section 11(2) should be repealed. If existing legislation could only cover part of section 11(2), whether amendments to section 11(2) or to the general law should be made to cover what was necessary; (b) Whether the definition of "terrorist act" also covered false threat of terrorist act; (c) In relation to the recent court case convicting a man under section 11(2) of the Ordinance, when did the information that the offender had previous records of psychiatric treatment come to light, and who first got hold of such information; (d) Whether there were any internal guidelines for enforcing the Ordinance; if so; what were they; (e) To examine how the interests of "innocent parties" who had unknowingly provided/invested funds/other property to/in terrorists/terrorist organisations could be protected; and (f) To review definitions in section 2 of the Ordinance vis-à-vis offence sections of the Ordinance to ensure that the net was not cast unduly wide. 	<p>Administration's response issued for the meeting on 26 November 2003 [CB(2)446/03-04(01)]</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>

Date of meeting	List of follow-up actions	Administration's response
26 November 2003	<p>To provide a written response on the following -</p> <ul style="list-style-type: none"><li data-bbox="577 373 1451 517">(a) Background on the need for everyone to observe the requirements under section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and of the Organized and Serious Crimes Ordinance (Cap. 455);<li data-bbox="577 560 1451 847">(b) Background on the need for everyone to observe the requirement to report property known or suspected to be terrorist property under section 12 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), given that the scope of section 25A of Cap. 405 and 455 was considerably narrower than that of section 12 of Cap. 575 in that the former was related to proceeds derived from drug trafficking or crimes;<li data-bbox="577 890 1451 1034">(c) Legal basis for interpreting "entities subject to anti-money laundering obligations" in the Financial Action Task Force on Money Laundering to include everybody in the context of Hong Kong;<li data-bbox="577 1077 1451 1401">(d) To amend clause 6 (new section 10) if the legislative intent of the clause was to prohibit the recruitment of members for or becoming a member of a body of terrorists or terrorist associates. In its present form, a person would not be criminalised for recruiting another person to become a member of, or becoming a member of, a body of persons even if he knew or had reasonable grounds to believe that the body of persons was terrorists or terrorist associate(s) although they were not specified in a notice under section 4(1) or (2) or	<p>Administration's response issued for the meeting on 10 January 2004 [CB(2)906/03-04(02)]</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>

	<p>section 5(2) of Cap. 575;</p> <p>(e) To provide relevant case law on the objective mens rea of "having reasonable grounds to believe" and to consider deleting the same in sections 7, 8, 9 and new section 10 of Cap. 575;</p> <p>(f) To amend section 7(a) of Cap. 575 to the effect that a person would only be criminalised if he supplied funds to a person who he knew or had reasonable grounds to believe to be a terrorist or terrorist associate, with the intention that the funds be used in part or in whole to finance or assist the commission of a terrorist act;</p> <p>(g) To amend section 8 of Cap. 575 to the effect that a person would only be criminalised if he made funds or financial (or related) services available to a person who he knew or had reasonable grounds to believe to be a terrorist or terrorist associate, with the intention that the funds, etc. be used in part or in whole to finance or assist the commission of a terrorist act; and</p> <p>(h) To confirm the interpretation that a notice of specification published in the Gazette did not create a presumption or proof that the person accused of an offence under section 7, 8 or 9 knew or had reasonable grounds to believe that another person was a terrorist or terrorist associate.</p>	<p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>
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Date of meeting	List of follow-up actions	Administration's response
5 December 2003	<p>To provide a written response to the following issues raised by members at the meeting -</p> <ul style="list-style-type: none"><li data-bbox="577 411 1451 770">(a) To consider providing a compensation arrangement that was better than the common law position by amending section 18 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) by repealing subsection (2)(c) that there had been some "serious default" on the part of any person concerned in obtaining the relevant specification and providing that no compensation would be payable if the Government could satisfy the court that the obtaining of the relevant specification under section 5(2) or 6(1) was misled by the affected person's act or conduct;<li data-bbox="577 818 1451 962">(b) To set out the provisions for the powers of investigations under the Bill and how previous concerns raised by Members on the law enforcement powers under the United Nations (Anti-Terrorism Measures) Bill had been addressed; and<li data-bbox="577 1010 1451 1106">(c) Background of section 21 of Cap. 575 - proceedings inter partes should be held in open court unless otherwise ordered by the court.	<p>The Administration is considering the suggestion in detail. Response awaited.</p> <p>Administration's response issued for the meeting on 10 January 2004 [CB(2)906/03-04(03)]</p> <p>- ditto -</p>

Date of meeting	List of follow-up actions	Administration's response
10 January 2004	<p>(1) To provide a written response on the following -</p> <ul style="list-style-type: none"> (a) Whether the Administration would consider amending the definition of "terrorist act" in the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) taking reference from the anti-terrorism legislation in Canada and New Zealand, which required that there must be a specific intention to cause an outcome such as those listed in paragraph (a)(i) of the definition of that term in section 2(1) of the Ordinance; (b) Which overseas jurisdictions used a criminal approach in implementing paragraph 1(d) of the United Nations Security Council Resolution (UNSCR)1373; (c) Whether the new section 12A(9) would override the provisions protecting legal privilege under section 2(5) of the Ordinance and the circumstances under which that section would be used; and (d) Whether the coverage of 'to relate to any matter relevant to the investigation' in the new section 12A(3)(c) and (6) was too wide and should be tightened. <p>(2) To provide -</p> <ul style="list-style-type: none"> (a) The judgment of District Court in <u>HKSAR v Yam Ho Keung</u> (DCCC of 2001); and (b) Other judgment(s) made by Hong Kong court(s) requiring the 	<p>Administration's response issued for the meeting on 25 February 2004 [CB(2)1195/03-04(04)]</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto-</p> <p>- ditto -</p>

	<p>prosecution to prove "reasonable grounds to believe" (other than <u>HKSAR v Shing Siu Ming and Others</u>).</p> <p>(3) To provide a written response on whether the Secretary for Justice still considered the various provisions of the Ordinance and of the Bill did not undermine human rights and did not go beyond the requirements of UNSCR 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering, having regard to the views expressed by deputations/individual, in particular those from JUSTICE. The Legal Policy Division of the Department of Justice was also requested to provide a similar response.</p>	<p>Administration's response issued for the meeting on 25 February 2004 [CB(2)1195/03-04(01)]</p>
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Council Business Division 2
Legislative Council Secretariat
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