

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

Purpose

This paper sets out the Administration's proposed amendments to the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) and the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 (the Bill) for Members' consideration.

International obligations

2. The purpose of the Ordinance and the Bill is to fulfil Hong Kong's international obligations to combat terrorist financing and acts of terrorism under United Nations Security Council Resolution (UNSCR) 1373, the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF), and the relevant Conventions. Hong Kong is not yet in full compliance with UNSCR 1373 and FATF's Special Recommendations on terrorist financing. In addition, UNSCR 1373 calls on States to implement fully the international conventions relating to terrorism. In this regard, Hong Kong has yet to implement the International Convention for the Suppression of Terrorist Bombings (the Bombings Convention) although the Convention has already been extended to Hong Kong. Hong Kong also needs to implement the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Maritime Safety Convention) and its Protocol on fixed platforms.

3. By their nature, these international agreements only specify the obligations in general terms. They set out the broad framework for domestic legislation, leaving the necessary law enforcement powers and other connected matters such as the appeal channels for the aggrieved to be provided by each jurisdiction against the background of its own legal system. Many major common law jurisdictions have already put in place legislation to implement the terrorism-related obligations referred to in paragraph 2. Examples are Australia, Canada, New Zealand, the United Kingdom and the United States. Failure to enact adequate legislation in Hong Kong will not only adversely affect its reputation as an international city and breach its international obligations, but also project Hong Kong as a weak link in combating terrorism and terrorist financing and a relatively soft target for such activities.

4. As Hong Kong has been an active partner in international efforts in combating crime and criminal proceeds, we are expected to continue to contribute to the global fight against terrorism and terrorist financing. Hong Kong requires the necessary legislative backing to carry out this role.

Proposed amendments

5. Having carefully considered the comments and views expressed by Members, deputations and interested individuals, we propose to introduce a number of amendments to the Ordinance and the Bill to address the concerns raised. Our proposals are set out in the following paragraphs. Subject to discussion at the Bills Committee, we will prepare the necessary Committee Stage Amendments accordingly.

Definition of “terrorist act”

6. We are amenable to the suggestion of tightening the definition of “terrorist act” in section 2 of the Ordinance by extending the existing element of “intention” in paragraph (a)(i)(E) and (F) to paragraph (a)(i)(A) to (D) of the definition, taking reference from the definition of “terrorist act” in the Terrorism Suppression Act 2002 of New Zealand. In effect, “terrorist act” will be tightened to mean the use or threat of action where the action is **intended to** cause serious violence against a person, cause serious damage to property, endanger other persons’ lives, create a serious risk to the health or safety of the public etc.

Formulation of offences

7. Having reviewed the requirements under UNSCR 1373, we agree that section 7 of the Ordinance may be amended to follow more closely the formulation in paragraph 1(b) of UNSCR 1373. In effect, section 7 will be revised to prohibit provision or collection of funds intended, known or reasonably believed to be used to carry out a terrorist act.

8. The new Parts 3A and 3B in the Bill are intended to follow substantially the offences proscribed by the Bombings Convention, the Maritime Safety Convention and the Protocol on fixed platforms. We will tighten the offences created by closely following the provisions in the Conventions and Protocol.

Reflecting policy intention more clearly

9. For the new section 10 on prohibition of recruitment for terrorist groups, we will improve its drafting so that the prohibition is against recruitment for terrorist groups (and not individuals), and against recruitment when the person “knows or have reasonable grounds to believe” that the group has **already** been gazetted.

10. Addressing comments that the provisions facilitating our law enforcement agencies’ exchange of information with their overseas counterparts may allow unrestricted disclosure of the information concerned, we propose to specifically **stipulate the purpose of disclosure, i.e., to suppress terrorist financing.**

Law enforcement powers

11. Fully noting concerns on the coverage of the provisions on law enforcement powers, we propose the following changes -

- (a) to add provisions under the new section 6(10) to the effect that the Secretary for Security may give a direction to seize terrorist property **only if he has reasonable grounds to suspect that the property will be removed from Hong Kong;**
- (b) to amend the new sections 12A(3)(c)(ii) and (6) to the effect that only materials “**relevant to**” (as opposed to the present lower requirement of “related to”) investigation will be required to be produced to the law enforcement agencies;
- (c) to delete the new section 12A(9) to remove any doubt about the protection of legal privilege under the existing section 2(5)(a) and (b);
- (d) to subject the new sections 12A(11) and 12B(13) to the existing section 2(5)(a) and (b) to remove any doubt that the two new provisions override the protection of legal privilege;
- (e) to delete the new section 12A(12) to remove any doubt about the protection of the privilege against self-incrimination as guaranteed under the existing section 2(5)(c);

- (f) to amend the new section 12G(1) to clarify that a search warrant may be issued when there is reasonable cause to suspect that there is terrorist property or evidence of a relevant offence in any premises; and
- (g) to amend the new section 12G(2) to clarify that powers therein can only be exercised by law enforcement agencies who have entered the premises concerned by virtue of a warrant issued under new section 12G(1).

Compensation

12. To address concerns raised, we propose to amend the compensation provision under the existing section 18 to clearly **preserve the common law rights to compensation** of an individual who has been specified as a terrorist/terrorist associate or whose property has been specified or frozen as terrorist property. We also propose to amend **“serious default” to “default”**.

Security Bureau
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