

立法會
Legislative Council

Ref : CB2/BC/11/02

**Background brief prepared by the Legislative Council Secretariat
for the Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003**

Purpose

This paper provides a summary of the issues and concerns raised by Members regarding the Administration's proposals in the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003. The purpose of these proposals is to implement further measures against terrorism and terrorist financing in the stage two anti-terrorism legislative exercise.

Background

2. In the stage one anti-terrorism legislative exercise, the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) was enacted to implement the mandatory elements of United Nations Security Council Resolution (UNSCR) 1373 and the most pressing elements of the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF). The relevant Bill i.e. the United Nations (Anti-Terrorism Measures) Bill, was passed by the Legislative Council (LegCo) on 12 July 2002 and a substantive part of it has come into operation on 23 August 2002. It is the Administration's intention to implement the stage two anti-terrorism measures by way of the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003. The Panel on Security was consulted on the proposals in the Amendment Bill at its meetings on 16 January and 20 February 2003.

The Administration's proposals

3. At the meeting of the Panel on Security on 16 January 2003, the Administration briefed Members that the following proposals of the stage two

anti-terrorism legislative exercise would be introduced in the Amendment Bill -

- (a) section 6 of the United Nations (Anti-Terrorism Measures) Ordinance would be amended to implement the requirements under UNSCR 1373 and the FATF Special Recommendations to freeze the non-fund terrorist property;
- (b) new provisions would be made to implement the International Convention for the Suppression of Terrorist Bombings of 1997 (the Convention required States Parties to criminalise terrorist type attacks by means of explosives or other lethal devices);
- (c) new provisions would be made to implement the International Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf of 1988 (the Convention and its Protocol required State Parties to criminalise unlawful acts against the safety of maritime navigation and of fixed platforms located on continental shelf); and
- (d) new provisions would be made to enable law enforcement agencies to require relevant persons to furnish information or to produce materials, and also to search premises and seize relevant materials.

Review of compensation provision under the Ordinance

4. The Administration also presented to the Panel meeting on 16 January 2003 a paper (LC Paper No. CB(2)846/02-03(04)) on the review of the compensation provision under the Ordinance. The review was made in response to the concern expressed by some members of the Bills Committee formed to study the United Nations (Anti-Terrorism Measures) Bill that the compensation arrangement was not of practical benefit to the affected persons. The main reason put forward by these members was that it would be difficult for the affected persons to satisfy the court that there had been "serious default" on the part of the Government.

5. The Administration's review concluded that the compensation provision under the Ordinance was proportionate and reasonable. The provision of "serious default" in section 18(2)(c) was consistent with the common law position that negligence had to be established on the part of the Government, and was based on established compensation criteria adopted in existing ordinances. It also stood out among the anti-terrorist laws in other common law jurisdictions in providing compensation for "incorrect" Government specifications.

Issues and concerns raised by Members at the meeting of the Panel on Security on 16 January 2003

6. Hon Margaret NG was of the view that the stage two anti-terrorism legislative exercise should cover all those issues previously raised by the Bills Committee which the Administration had not been able to satisfactorily address because of the need to enact the Bill by the end of the 2001-2002 legislative session. These issues included the following -

- (a) the scope of section 10 of the Ordinance was so wide that it would unnecessarily involve many people who were completely unrelated to terrorist organisations;
- (b) the power in relation to freezing of property other than funds was too wide, having regard to the fact that UNSCR 1373 only stipulated the freezing of funds and other financial assets or economic resources committed or attempted to commit a terrorist act;
- (c) section 12 of the Ordinance, which imposed an obligation on "any person", was at variance with UNSCR 1373 and FATF as neither UNSCR 1373 nor FATF required Hong Kong to make a potential criminal of every ordinary citizen. FATF only imposed the obligation on "financial institutions, other business or entities subject to anti-money laundering obligations";
- (d) the wide powers of seizure, investigation and detention of authorised officers contained in the United Nations (Anti-Terrorism Measures) Bill, which were deleted in the Committee Stage in response to the concern of the Bills Committee, should be narrowed down and re-introduced by way of an amending bill and not subsidiary legislation; and
- (e) the offence provisions in the Ordinance should be amended as they lacked specific intent, the ingredient of which was essential in criminal offences.

7. Hon Margaret NG, Hon Albert HO and Hon Cyd HO expressed concern that the above outstanding issues in the stage one anti-terrorism legislative exercise had not been addressed by the Administration. They pointed out that the Secretary for Security (S for S) had undertaken to do so during the meetings of the Bills Committee and also at the Council meeting on 10 July 2002 when the Bill resumed its Second Reading debate.

8. Hon Cyd HO was of the view that the Administration should review the anti-terrorism measures set out in the Ordinance periodically to ensure that they were in line with the international trend. Ms HO pointed out that both Australia and Canada had established a mechanism under which the government would report to the parliament on statistics on anti-terrorism cases. Ms HO requested the Administration to find out more about the mechanism and to consider introducing a similar reporting mechanism under the Ordinance.

9. The Administration pointed out that there was a specified scope for the stage two anti-terrorism legislative exercise as set out in paragraph 3 above. The Administration undertook to prepare a written response to the issues and concerns raised by Members.

Issues and concerns raised by Members at the meeting of the Panel on Security on 20 February 2003

10. The Administration's written response (LC Paper CB(2)1113/02-03(03)) to the issues and concerns raised by Members at the meeting of the Panel on Security on 16 January 2003 was presented to the Panel meeting on 20 February 2003. In addition to setting out the concerns raised in respect of the Ordinance before its passage and how the Administration had addressed the concerns, the paper also provided information on anti-terrorism laws in overseas jurisdictions, including requirements for the Canadian and Australian governments to report to parliaments on statistics on anti-terrorism cases. In the same paper, the Administration undertook to -

- (a) give priority consideration to introducing the Amendment Bill to deal with the freezing of non-fund terrorist property and the provision of enforcement powers;
- (b) enable S for S to delegate the power under section 16(2) of the Ordinance to senior officers of the Security Bureau;
- (c) review anti-terrorism measures set out in the Ordinance periodically to ensure that they were in line with the international trend; and
- (d) include in the Amendment Bill a proposed amendment to section 10 of the Ordinance by improving the language of the provision and providing for the appropriate mens rea.

11. Hon Cyd HO again requested the Administration to include in the Amendment Bill a requirement for the Administration to report to LegCo statistics

on anti-terrorism cases, as adopted in both Canada and Australia. The Administration replied that it was prepared to do so when such information was available. The Administration however did not consider it necessary to make such reporting statutory.

12. Hon LAU Kong-wah, Chairman of the Panel, and Hon Cyd HO shared the view that Members should not be pressurised, as in the stage one legislative exercise, to scrutinise the Amendment Bill. The Administration assured Members that as much time as possible would be given to Members to scrutinise the Amendment Bill.

13. Hon Albert HO requested the Administration to re-consider relaxing the criterion of "serious default" in section 18 of the Ordinance, and to provide a written response prior to the introduction of the Amendment Bill into LegCo.

14. In its written reply to Hon Albert HO's request in paragraph 13 above (LC Paper No. CB(2)1971/02-03(01)) on 5 May 2003, the Administration remained of the view that section 18 was proportionate and reasonable. It also pointed out that anti-terrorism laws in other jurisdictions did not, generally speaking, provide compensation for "wrongful" Government specifications.

Relevant papers

15. Members may wish to access the LegCo Website for further details of the following relevant papers -

- (a) The Administration's paper entitled "Review of compensation provision under the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575)" (LC Paper No. CB(2)846/02-03(04)) (paragraph 4 above refers);
- (b) Background brief prepared by LegCo Secretariat for the Panel on Security on 20 February 2003 (LC Paper No. CB(2)1113/02-03(04));
- (c) The Administration's paper setting out its response to issues raised by Members at the meeting on 16 January 2003 (LC Paper No. CB(2)1113/02-03(03)) (paragraph 10 above refers);
- (d) Minutes of meeting of the Panel on Security on 16 January 2003 (LC Paper No. CB(2)1119/02-03)); and

- (e) Minutes of meeting of the Panel on Security on 20 February 2003
(LC Paper No. CB(2)1451/02-03)).

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9 October 2003