

立法會 *Legislative Council*

LC Paper No. LS 107/02-03

**Paper for the House Committee Meeting
on 23 May 2003**

Legal Service Division Report on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003

I. SUMMARY

- 1. Objects of the Bill**

To amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance") to -

 - (a) give effect to the outstanding obligations under the United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering;
 - (b) implement United Nations International Convention for the Suppression of Terrorist Bombings, 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");
 - (c) repeal and replace section 10 in relation to prohibition on recruitment;
 - (d) provide for the power of investigation in relation to offences under the Ordinance, and powers of seizure and detention of property suspected to be terrorist property;
 - (e) specify the authorities to which and the persons to whom information obtained under the Ordinance may be disclosed; and
 - (f) make other drafting and consequential amendments.
- 2. Comments**
 - (a) The Maritime Safety Convention and the Protocol will be applied to the HKSAR in due course.
 - (b) The proposed powers of freezing property other than funds, disclosure of information, investigation into offences, seizure and detention of suspected terrorist property warrant detailed scrutiny.
- 3. Public Consultation**

According to the Administration, the Shipping Consultative Committee has been consulted.
- 4. Consultation with LegCo Panel**

The Panel on Security discussed the main legislative proposals at its meetings on 16 January and 20 February 2003.
- 5. Conclusion**

We are still scrutinizing the Bill. Members may consider setting up a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance") to -

- (a) give effect to the outstanding obligations of freezing property other than funds under the United Nations Security Council Resolution 1373 ("UNSCR 1373") and the Special Recommendations of the Financial Action Task Force on Money Laundering ("FATF");
- (b) implement the United Nations International Convention for the Suppression of Terrorist Bombings ("the Bombings Convention");
- (c) implement 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");
- (d) repeal and replace section 10 in relation to prohibition on recruitment;
- (e) specify the authorities to which and the persons to whom information obtained under the Ordinance may be disclosed;
- (f) provide for the power of investigation in relation to offences under the Ordinance, and powers of seizure and detention of property suspected to be terrorist property; and
- (g) make other drafting and consequential amendments.

LegCo Brief Reference

2. SBCR 2/16/1476/74 issued by the Security Bureau on 7 May 2003.

Date of First Reading

3. 21 May 2003.

Comments

Power to freeze property

4. The Bill seeks to extend the power of the Secretary for Security to freeze funds under section 6 of the Ordinance to any property suspected to be terrorist

property. The only justification stated in the LegCo Brief for the proposed power is the requirement to meet the obligation imposed under the UNSCR 1373 and the Special Recommendations of FATF. "Property" as defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) includes land, but no provision is made in the Bill as to how the power would be enforced under the present land registration system.

Implementing the Bombings Convention, the Maritime Safety Convention and the Protocol

5. To implement the Bombings Convention, the Bill prohibits against bombing of an infrastructure facility, a place of public use, a public transportation system or a state or government facility in the HKSAR by means of explosive or other lethal device. To implement the Maritime Safety Convention and the Protocol, the Bill prohibits various acts of violence relating to ships and fixed platforms. These offences would apply to any person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR.

6. According to the LegCo Brief, the People's Republic of China ratified the Bombings Convention and applied it to the HKSAR in November 2001. The People's Republic of China ratified the Maritime Safety Convention and the Protocol in August 1991 and arrangements will be made to have them applied to the HKSAR in due course. It would be relevant for Members to examine the procedure for and the documents relating to the application of the Bombings Convention, and the justifications for proposing legislative measures prior to application of the Maritime Safety Convention and the Protocol to the HKSAR.

7. The three draft Orders attached to the LegCo Brief form part of the legislative proposals to implement the Bombings Convention, the Maritime Safety Convention and the Protocol and have been approved in principle by the Chief Executive in Council. The two Orders proposed to be made under the Fugitive Offenders Ordinance (Cap. 503) would be subsidiary legislation and LegCo has only the power to repeal them. The Order to be made under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) would be subsidiary legislation requiring the approval of LegCo. It is the Administration's intent that they be referred back to the Chief Executive in Council to be made after the Bill is passed.

Prohibition on recruitment

8. The Bill seeks to replace section 10 so that the new section substantially reflects the provision proposed by the Administration during the Committee Stage before the passage of the Ordinance. The new section 10(2) improves on the original proposal in that it requires a person to take all practicable steps to cease to be a member of a body of persons only after he knows or has reasonable grounds to believe that the body of person is specified in the notice or order published in the Gazette.

Disclosure of information

9. The Bill proposes to amend section 12 of the Ordinance, sections 25A of Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) ("DTRPO") and the Organized and Serious Crimes Ordinance (Cap. 455) ("OSCO") to enable authorized officers to disclose information obtained under these Ordinances. For disclosure of information to relevant HKSAR Government departments or the Independent Commission Against Corruption, we note that unlike other similar Ordinances, there is no restriction on the purpose of disclosure.

10. For disclosure of information to the relevant authorities or persons of any place outside the HKSAR for the purpose of promoting multilateral cooperation in preventing and suppressing the financing of terrorist acts, there is no requirement to obtain the approval of the Ministry of Foreign Affairs of the People's Republic of China, unlike the proposed section 12D which deals with disclosure of information to any organ of or any person in the service of the United Nations. No reason has been given in the LegCo Brief for the different policies involved.

Powers of investigation, seizure and detention

11. The proposed power of investigation such as the order requiring furnishing of information and production of material, the order to make material available and search warrant, and the powers of seizure and detention of suspected terrorist property are based on relevant provisions in DTRPO, OSCO and the Dangerous Drugs Ordinance (Cap. 134) (collectively "the Related Ordinances"). Under the Bill, compensation would be paid, by order of the Court of First Instance, on the basis of serious default on the part of the person concerned with the seizure or detention of the property concerned and that loss has been suffered in relation to the property as a consequence.

12. We note that certain powers of the Secretary for Justice in the Related Ordinances are proposed to be extended to officers authorized by the Secretary for Security. There is no explanation why the Bill provides for two sets of conditions under which an application may be made to the magistrate or the judge for a warrant to enter premises and search for, seize, remove and detain property. It is also relevant to examine the effect of section 2(5) and (7) of the Ordinance relating to legal privilege, self-incrimination and search and seizure of journalistic materials on the proposed powers.

Public Consultation

13. The LegCo Brief does not state whether public consultation has been carried out. According to the Administration, the Shipping Consultative Committee comprising of representatives from the shipping industry has been consulted on the proposals to implement the Maritime Safety Convention and the Protocol and has no comments on the proposals.

Consultation with LegCo Panel

14. The Panel of Security discussed the main legislative proposals to implement further measures against terrorism and terrorist financing at its meetings on 16 January and 20 February 2003.

15. Some members were of the view that the Bill should cover all issues raised by the Bills Committee on the United Nations (Anti-Terrorism Measures) Bill, which the Administration had not been able to satisfactorily address because of the need to pass that bill by the end of the last legislative session, lest attracting criticism from the international community and sanctions from FATF. The Administration provided a summary of how the Administration had, by way of Committee Stage amendments to that bill, addressed the main concerns raised by the Bills Committee. The Administration also clarified that the Bill would include an amendment to section 10 of the Ordinance on the prohibition of recruitment.

16. In relation to the review of the compensation provision under the Ordinance, a member requested the Administration to re-consider relaxing the criterion of "serious default" in section 18 of the Ordinance for compensating a person who had suffered loss as a result of a wrongful specification under section 5 or 6.

17. In its recent written response to the issue, the Administration has informed members that its conclusion remains that section 18 is proportionate and reasonable, in that it is consistent with the common law and is based on established compensation criteria adopted in other existing ordinances. The Administration has re-affirmed that section 18 is not intended to exclude other common law remedies a person may take against the Government. The Administration is prepared to discuss further with Members the need for an additional provision to be included in the Ordinance to clarify that other common law remedies are still available.

18. A Member pointed out that the Administration had agreed to review the anti-terrorism measures in the Ordinance periodically to ensure that they were in line with the international trend and asked the Administration to provide an update in this regard. The Member also requested the Administration to consider introducing a mechanism of providing statistical reports on cases pursued under the Ordinance similar to that in Australia and Canada. The Administration was prepared to report to the Legislative Council statistics on anti-terrorism cases where available. However, it did not consider it necessary to make statutory provisions for that purpose.

19. Panel members also expressed the view that the Administration should carefully consider the timing for the introduction of the Bill into LegCo, given that Members would need to devote time to scrutinize the National Security (Legislative Provisions) Bill. The Administration assured Panel members that as much time as possible would be given to LegCo to scrutinize the Bill. Members may refer to minutes of the Panel meetings (LC Paper Nos. CB(2)1119/02-03 and CB(2) 1451/02-03) for reference.

Conclusion

20. The Legal Service Division is still scrutinizing the Bill. As the Bill involves many issues that warrant detailed scrutiny, Members may consider forming a Bills Committee to study it.

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