

立法會
Legislative Council

LC Paper No. CB(4)199/11-12
(These minutes have been seen
by the Administration)

Ref : CB4/BC/1/11

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

**Minutes of the second meeting
held on Monday, 16 April 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Margaret NG
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Cyd HO Sau-lan
Hon WONG Kwok-kin, BBS
- Members absent** : Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
- Public Officers attending** : Items II and III
Ms Carol YIP Man-kuen
Deputy Secretary for Security 1
Ms Veronica WONG Hoi-yee
Assistant Secretary for Security A2
Ms Leonora IP Wan-yok
Senior Assistant Law Draftsman
Department of Justice
Ms Denise CHAN Fung-shan
Senior Public Prosecutor
Department of Justice

Clerk in attendance : Ms Miranda HON
Chief Council Secretary (4)2

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Ian CHOW
Council Secretary (2)1

Ms Carmen HO
Senior Legislative Assistant (4)2

Action

I. Confirmation of minutes

[LC Paper No. CB(4)155/11-12]

The minutes of the meeting held on 20 March 2012 were confirmed.

II. Meeting with the Administration

[LC Paper No. CB(4)157/11-12(01)]

2. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Admin 3. The Administration was requested to -

(a) reconsider whether it was necessary to include a definition of "property" so as to clearly specify which provisions of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") were intended to apply to property within Hong Kong only, and which provisions were intended to apply to property whether in Hong Kong or elsewhere;

(b) clarify which "international organizations" were intended to be covered by the proposed definition of "terrorist act" in section 2(1) of UNATMO; advise whether there was local legislation which contained a definition of the term "international organization" and if there was, what the details were; and consider whether it was necessary to define "international organization" in UNATMO;

Action

- (c) explain with examples the effect of replacing the term "funds" by "property" in section 15(1)(b) of UNATMO with regard to the three exceptions enumerated in that section which might be specified in a licence granted by the Secretary for Security under section 6(1); and
- (d) provide a table to set out the Administration's response to the concerns raised by members of the Subcommittee on Rules of the High Court (Amendment) Rules 2009 that were related to various definitions including "funds" and "property", and how those concerns might impact on the proposed replacement of "funds" by "property" under the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 ("the Bill").

Admin

4. The Administration was also requested to provide a written response to the concerns raised by the Hong Kong Bar Association in its submission dated 10 April 2012 (LC Paper No. CB(4)158/11-12(01)) before the next meeting of the Bills Committee.

III. Clause-by-clause examination of the Bill

[Legislative Council Brief: File Ref: SBCR 9/16/1476/74, LC Paper Nos. CB(3)468/11-12, LS34/11-12 and CB(4)139/11-12(02) to (04)]

5. The Bills Committee completed the clause-by-clause examination of the Bill.

IV. Date of next meeting

6. The Bills Committee agreed to hold the next meeting on 4 May 2012 at 4:30 pm to meet deputations and discuss with the Administration. Members also noted that two more meetings of the Bills Committee had been scheduled for 14 and 21 May 2012 at 4:30 pm respectively.

(Post-meeting note : As directed by the Chairman, the next meeting of the Bills Committee was subsequently rescheduled to be held on 7 May 2012 at 8:30 am.)

Action

7. The meeting ended at 9:27 am.

Council Business Division 4
Legislative Council Secretariat
5 July 2012

**Proceedings of the second meeting of the Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012
on Monday, 16 April 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject	Action Required
000000 - 000843	Chairman Administration	Briefing by the Administration on its response to the issues raised by the Bills Committee at the meeting held on 20 March 2012 (LC Paper No. CB(4)157/11-12(01))	
000844 - 000850	Chairman	Confirmation of minutes of the meeting held on 20 March 2012 (LC Paper No. CB(4)155/11-12)	
000851 - 001634	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG expressed concern that the coverage of the proposed section 8(a) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") was too wide, as it would be an offence if a person made any property available, by any means, directly or indirectly, to or for the benefit of another person knowing that, or being reckless as to whether, the person was a terrorist or terrorist associate. Moreover, the term "funds" in UNATMO would be replaced by the term "property" which had a much wider coverage. In the circumstances, she asked about the measures that an ordinary citizen could take to avoid committing an offence under the proposed section 8(a) inadvertently.</p> <p>The Administration responded that the Bills Committee on the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 had discussed the subject in the past. As mentioned in paragraph 7 of the Administration's paper, the proposed offences under section 8 of UNATMO required the mental element of knowledge or "recklessness". The prosecution had to produce solid evidence to prove that a person was guilty of the offences. Thus, there were sufficient safeguards against ordinary citizens committing the offences inadvertently.</p> <p>Dr Margaret NG remarked that the Administration's response was totally unacceptable.</p>	

Time marker	Speaker	Subject	Action Required
		<p>The Administration further explained that the intent of the proposed section 8 of UNATMO was to criminalize the act of making property or financial (or related) services available to, or collecting or soliciting property or financial (or related) services for, terrorists and terrorist associates by an agent. Hence, the term "indirectly" was included.</p>	
001635 - 002241	<p>Chairman ALA3 Administration Dr Margaret NG</p>	<p>Referring to paragraphs 5 and 6 of the Administration's paper, ALA3 asked the Administration to reconsider whether it was necessary to include a definition of "property" so as to clearly specify which provisions of UNATMO were intended to apply to property within Hong Kong only, and which provisions were intended to apply to property whether in Hong Kong or elsewhere, e.g. the proposed sections 7 and 8 of UNATMO.</p> <p>The Administration responded that the term "property" in some sections of UNATMO, such as section 6, should be understood as property in Hong Kong. Therefore, it was preferable to allow a certain degree of flexibility in the definition of "property". Moreover, the definition of "property" under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO") was neutral as to whether it covered property outside Hong Kong.</p> <p>ALA3 suggested that a subsection could be added to the existing section 3 of UNATMO to stipulate which sections of UNATMO would apply to property outside Hong Kong.</p> <p>The Administration responded that since the definition of "property" under IGCO would apply to UNATMO, and the Administration intended to limit the amendments to UNATMO to those recommended by the Financial Action Task Force on Money Laundering only, it did not see the need to amend UNATMO as proposed by ALA3.</p> <p>The Chairman requested the Administration to reconsider ALA3's suggestion and provide a written response.</p>	<p>Admin (paragraph 3(a) of the minutes refers)</p>

Time marker	Speaker	Subject	Action Required
002242 - 002824	Chairman Mrs Sophie LEUNG ALA3 Dr Margaret NG	<p>Mrs Sophie LEUNG requested ALA3 to clarify the definition of "funds" and "property".</p> <p>ALA3 responded that "funds" as currently defined by section 2 of, and Schedule 1 to, UNATMO included money and other financial instruments, while "property" had a wider coverage including both tangible and intangible goods and property. Also, the proposed sections 7 and 8 of UNATMO were intended to cover property outside Hong Kong.</p> <p>Mrs Sophie LEUNG asked whether a person would commit an offence only if he/she had provided a terrorist with funds for more than one time.</p> <p>ALA3 advised that the offence provisions as drafted did not require persistent or repeated acts and that a person could commit an offence if he did such act for one time only.</p>	
002825 - 003436	Chairman Administration ALA3	<p>Clause-by-clause examination of the Bill</p> <p><u>Part 2: Amendments to United Nations (Anti-Terrorism Measures) Ordinance</u></p> <p><i>Clause 3 - Section 2 amended (Interpretation)</i></p> <p>ALA3 referred to paragraph 4 of the submission from the Hong Kong Bar Association ("HKBA"), and requested the Administration to clarify which international organizations were intended to be covered under the proposed definition of "terrorist act" in section 2(1) of UNATMO.</p> <p>The Administration responded that the inclusion of the expression "international organization" to UNATMO was based on the recommendation of the United Nations International Convention for the Suppression of the Financing of Terrorism ("the TF Convention"). The TF Convention did not define "international organization". It was commonly understood in the context of international law that an international organization referred to an international intergovernmental organization. For example, an international intergovernmental organization could be constituted by international multilateral treaty and had international legal personality and consisted of State members.</p>	Admin (paragraph 3(b) of the minutes refers)

Time marker	Speaker	Subject	Action Required
		<p>The Chairman requested the Administration to advise whether there was local legislation which contained a definition of the term "international organization" and if there was, what the details were.</p> <p>The Chairman also requested the Administration to provide a written response to the concerns raised by HKBA before the next Bills Committee meeting.</p> <p>ALA3 further requested the Administration to consider whether it was necessary to define the expression "international organization" in UNATMO.</p>	<p>Admin (paragraph 3(b) of the minutes refers)</p> <p>Admin (paragraph 4 of the minutes refers)</p> <p>Admin (paragraph 3(b) of the minutes refers)</p>
003437 - 003550	Chairman Administration	<p><i>Clause 4 - Section 6 amended (freezing of funds)</i></p> <p><i>Clause 5 - Section 7 amended (prohibition on provision or collection of funds to commit terrorist acts)</i></p> <p>Members raised no query.</p>	
003551 - 003655	Chairman Administration Dr Margaret NG	<p><i>Clause 6 - Section 8 substituted</i></p> <p>Dr Margaret NG reiterated that she had reservation about the proposed amendments which broadened the coverage of UNATMO.</p>	
003656 - 004259	Chairman Administration Dr Margaret NG	<p><i>Clause 7 - Section 15 amended (supplementary provisions applicable to licences mentioned in section 6(1) or 8)</i></p> <p>Dr Margaret NG requested the Administration to provide examples to explain the effect of replacing the term "funds" by "property" in section 15(1)(b) of UNATMO with regard to the three exceptions enumerated in that section which might be specified in a licence granted by the Secretary for Security under section 6(1).</p>	Admin (paragraph 3(c) of the minutes refers)
004300 - 004319	Chairman Administration	<p><i>Clause 8 – Schedule 1 repealed (funds)</i></p> <p>The Administration stated that the definition of "property" as set out under IGCO would apply to UNATMO, and "property" would cover both funds and non-fund property.</p>	

Time marker	Speaker	Subject	Action Required
004320 - 004335	Chairman Administration	<p><u>Part 3: Consequential Amendments to Rules of the High Court</u></p> <p><i>Clause 9 – Rules of the High Court amended</i></p> <p><i>Clause 10 – Order 117A, rule 24 amended (application concerning direction mentioned in section 6(10) or licence mentioned in section 6(1) or 8)</i></p> <p>Members raised no query.</p>	
004336 - 005200	Chairman Administration Dr Margaret NG Dr Philip WONG	<p><u>Part 4: Consequential Amendments to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance</u></p> <p><i>Clause 11 – Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance amended</i></p> <p><i>Clause 12 – Schedule 1 amended (interpretation)</i></p> <p>Dr Margaret NG reiterated that she had reservation about the proposed amendments which broadened the coverage of UNATMO.</p> <p>Dr Philip WONG asked whether "property" (該財產) in clause 12(2) of the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 ("the Bill") referred to one property or all assets of a terrorist.</p> <p>The Administration responded that the term "property" referred to all assets of a terrorist.</p>	
005201 - 005453	Chairman ALA3 Administration	<p><i>Long title</i></p> <p>ALA3 referred to paragraph 7 of the submission from HKBA and requested the Administration to explain the reason for not mentioning the TF Convention in the Long Title of UNATMO.</p>	Admin (paragraph 4 of the minutes refers)
005454 - 005830	Chairman Administration Dr Margaret NG	<p>Date of next meeting</p> <p>In response to Dr Margaret NG's enquiries, the Chairman requested the Administration to provide a table to set out the Administration's response to the concerns raised by members of the Subcommittee on Rules of the High Court</p>	Clerk Admin (paragraph 3(d) of the minutes refers)

Time marker	Speaker	Subject	Action Required
		(Amendment) Rules 2009 that were related to various definitions including "funds" and "property". He also requested the Administration to explain how those concerns might impact on the proposed replacement of "funds" by "property" under the Bill.	

Council Business Division 4
Legislative Council Secretariat
5 July 2012