



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : SB CR 9/16/1476/74

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Ms Iris LEE
Principal Assistant Secretary for Security
Security Bureau
10/F, East Wing
Central Government Offices
2 Tim Mei Avenue
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Hong Kong

12 July 2017

Dear Ms LEE,

United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017

I am scrutinizing the subject Bill ("Bill") with a view to advising Members on its legal and drafting aspects and would like to seek information or clarification on the following matters:

General

Please clarify whether the Administration, in drafting the Bill, has referred to or modelled on any legislation implemented in other jurisdiction(s); and, if the answer is in the affirmative, please provide detailed information on such overseas legislation, and the reasons for referring to or modelling on them.

Responses to Financial Action Task Force's view on section 6 of Cap. 575

According to paragraph 4 of the Legislative Council Brief (File Ref: SB CR 9/16/1476/74), the Financial Action Task Force ("FATF") pointed out that section 6 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) was insufficient for the purpose of freezing terrorists' (or terrorist associates') funds or assets without delay. Please explain to Members whether and how the Bill seeks to address FATF's concerns on section 6 of Cap. 575.

Legal effect and drafting of the new section 8A

It is noted that the new section 8A(1)(b) and (c) seeks to impose prohibitions on dealing with any property owned or controlled by a terrorist or terrorist associate specified under section 4 or 5 of Cap. 575, and property held by a person on behalf of, or at the direction of, such terrorist or terrorist associate (which are defined in section 2(1) of Cap. 575). It is also noted that under the existing section 8 of Cap. 575, a person is prohibited from making any property available to or collecting property for a terrorist or terrorist associate. In the light of the above, please explain to Members why the prohibitions under the new section 8A(1)(b) and (c) would only be imposed in respect of property relating to a terrorist or terrorist associate specified in a notice or an order published in the Gazette pursuant to section 4 or 5 of Cap. 575 whereas the prohibition under the existing section 8 is imposed relating to any terrorist or terrorist associate (which satisfies the definition under section 2(1) of Cap. 575) without reference to section 4 or 5 of Cap. 575. Please also clarify whether the legal effect of the new section 8A is intended to be different in the light of the above difference in drafting.

Prohibition under the new section 8A(1)(c)

The new section 8A(1)(c) of Cap. 575 seeks to provide that a person must not, except under the authority of a licence granted by the Secretary for Security, directly or indirectly, deal with any property knowing that, or being reckless as to whether, such property is held by a person on behalf of, or at the direction of, a terrorist or terrorist associate ("holder") specified under section 4 or 5 of Cap. 575. Please clarify whether the identity of such a holder would appear in or could be ascertained from a notice or an order published in the Gazette under section 4 or 5 of Cap. 575. If the answer to the above is in the negative, please let Members know the means through which a person may ascertain whether any property is held by a person in the above manner.

Prohibitions on travelling for specified purpose under the new section 11K

According to Article 24 of the Basic Law, Hong Kong residents include permanent residents and non-permanent residents. Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. However, it seems that the proposed prohibitions under the new section 11K would only be applicable to Hong Kong permanent residents but not to non-permanent residents. Please explain to Members why the new section 11K would only apply to Hong Kong permanent residents.

Article 31 of the Basic Law provides that Hong Kong residents shall have freedom to travel and to enter or leave the Hong Kong Special Administrative Region ("HKSAR"). Unless restrained by law, holders of valid travel documents shall be free to leave HKSAR without special authorization. It is also noted that Article 8 of the Hong Kong Bill of Rights ("BoR") provides that everyone lawfully within Hong Kong shall, within Hong Kong, have the right to liberty of movement and be free to leave Hong Kong. Such rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in BoR. The Court of Final Appeal ("CFA"), in *Official Receiver & Trustee in Bankruptcy of Chan Wing Hing & Another v Chan Wing Hing & Another & Secretary for Justice* (2006) 9 HKCFAR 545, stated the test to be satisfied in order for a restriction on the above rights to be constitutional. Further, in *Official Receiver v Zhi Charles* (2015) 18 HKCFAR 467, CFA also stated that the restriction on the rights in Article 31 of the Basic Law and Article 8 of BoR can only survive constitutional scrutiny if it meets the minimal impairment test, the burden of showing which is on the party seeking to justify the restriction. In *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372, a four-step proportionality test has been laid down by CFA. Please explain to Members in detail how the proposed prohibitions under the new section 11K of Cap. 575 could satisfy the above tests.

As the first meeting of the Bills Committee will be held on 21 July 2017, please let us have your reply in both Chinese and English as soon as practicable, preferably by **18 July 2017**.

Yours sincerely,



(Evelyn LEE)
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