

香港特別行政區政府  
保安局



The Government of the  
Hong Kong Special Administrative Region  
Security Bureau

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18 July 2017

Miss Evelyn Lee  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Miss Lee,

**Re: United Nations (Anti-Terrorism Measures)  
(Amendment) Bill 2017**

I refer to your letter dated 12 July 2017 on the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 (the Bill). Our reply is set out below.

In gist, having regard to the United Nations Security Council Resolution (UNSCR) 2178 and the Recommendations of the Financial Action Task Force (FATF), the Bill aims to introduce four prohibitions to the United Nations (Anti-Terrorism Measures) Ordinance (UNATMO) (Cap. 575) –

- (a) to prohibit any Hong Kong permanent resident (HKPR) from leaving, or going on board a conveyance with the intent to leave, Hong Kong, or a place outside Hong Kong, for a foreign state for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts, or the provision or receiving of terrorist training (hereafter known as “specified purpose”);

- (b) to prohibit any person from providing or collecting, directly or indirectly, property, with the intention or knowing that the property will be used, in whole or in part, to finance the travel of individuals between states for specified purpose (whether or not the property is actually so used);
- (c) to prohibit any person from organizing or facilitating, directly or indirectly, the travel of individuals between states with the intention or knowing that the travel is for specified purpose; and
- (d) to prohibit any person, except under the authority of a licence granted by the Secretary for Security, from directly or indirectly dealing with any property, knowing that, or being reckless as to whether the property is –
  - (i) terrorist property specified under section 4 or 5 of UNATMO;
  - (ii) wholly or jointly owned or controlled, directly or indirectly, by a terrorist or terrorist associate specified under section 4 or 5 of UNATMO; or
  - (iii) held by a person on behalf of, or at the direction of, a terrorist or terrorist associate specified under section 4 or 5 of UNATMO.

### Overseas legislations

In drafting the Bill, we have referenced the relevant laws of some common law jurisdictions including Australia, Canada and the United Kingdom (UK). The relevant legislations are summarised in the table below with their full texts accessible via the given links. As the *modi operandi* of terrorist activities changes quickly and frequently, it is worth noting that overseas anti-terrorism legislations and measures are also evolving quickly in response to the latest terrorist trend.

<b>Prohibition</b>	<b>Australia</b>	<b>Canada</b>	<b>UK</b>
(a) Traveling for specified purpose	Sections 101.1, 101.2, 119.1, 119.2 and 119.4 of Criminal Code Act 1995 (www.legislation.gov.au/Details/C2017C00173)	Sections 83.191, 83.201 and 83.202 of Criminal Code (laws-lois.justice.gc.ca/eng/acts/C-46/)	Section 54 of Terrorism Act 2000 (www.legislation.gov.uk/ukpga/2000/11/contents);  Sections 5 and 6 of Terrorism Act 2006 (www.legislation.gov.uk/ukpga/2006/11/contents);  and Section 1(1) of Counter- Terrorism and Security Act 2015 (www.legislation.gov.uk/ukpga/2015/6/contents/enacted)
(b) Financing the travel for specified purpose	Sections 103.1, 103.2 and 119.4 of Criminal Code Act 1995	Sections 83.03 and 83.19(1) of Criminal Code	Sections 15, 16 and 17 of Terrorism Act 2000
(c) Organizing/ Facilitating the travel for specified purpose	Section 119.4 of Criminal Code Act 1995	Section 83.19(1) of Criminal Code	Section 12 of Terrorism Act 2000
(d) Dealing with specified terrorist property or property of specified terrorist or terrorist associate	Section 20 of Charter of the United Nations Act 1945 (www.legislation.gov.au/Details/C2016C00742)	Section 83.08 of Criminal Code	Section 11 of Terrorist-Asset-Freezing etc. Act 2010 (www.legislation.gov.uk/ukpga/2010/38/contents/enacted)

## Responses to FATF's view on section 6 of Cap. 575

FATF's Recommendation 6 requires members to freeze without delay the property of designated terrorists or terrorist associates<sup>1</sup>. FATF notes that the existing section 6 of Cap. 575 only operates against property specified in the freezing notice, and the freezing process involves several procedural steps which would lead to delays and undermine the objective of the requirements to freeze the property without delay and without prior notice. According to section 6 of Cap. 575, where the Secretary for Security has reasonable grounds to suspect that any property held by any person is terrorist property, the Secretary may, by notice in writing specifying the property, direct that a person must not deal with the property. The freezing notice needs to be given to the person holding the property concerned (the recipient), and the recipient is required to send a copy of the notice to each person, if any, whose property it is, or for or on behalf of whom the property is held (the owner). In the process, there is a chance that the property concerned has been moved, transferred or has dissipated.

To address FATF's concerns, it is proposed to add a new section 8A to Cap. 575 to prohibit any person, except under the authority of a licence granted by the Secretary for Security, from directly or indirectly dealing with any property, knowing that, or being reckless as to whether, the property is specified terrorist property or property owned or controlled by, held on behalf of or at the direction of a specified terrorist or terrorist associate. As the new section 8A imposes a direct prohibition in dealing with the property (instead of requiring several procedural steps for freezing the property), it can achieve the objective of minimizing delays in the freezing process.

## Legal effect and drafting of the new section 8A

The new section 8A is intended to implement FATF's Recommendation 6 to freeze without delay the property of designated terrorists or terrorist associates.

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<sup>1</sup> According to FATF's Recommendation 6, countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either –

- (a) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or
- (b) designated by that country pursuant to resolution 1373 (2001).

In Hong Kong, designated terrorists or terrorist associates are specified under section 4 or 5 of Cap. 575. The proposed section 8A(1)(b) and (c) seeks to address the above-mentioned insufficiency of the existing section 6 by imposing a prohibition on dealing with any property of terrorists or terrorist associates specified under section 4 or 5.

It should be noted that the new section 8A is not directly comparable with the existing section 8 of Cap. 575. Section 8 is intended to implement (a) UNSCR 1373 which requires, among other things, the prohibition from making funds, etc. available for the benefit of any terrorists or terrorist associates; and (b) FATF's Recommendation 5 on criminalising the financing of terrorism and associated money laundering. It is an offence provision, and is different in nature from the proposed section 8A which is intended to implement FATF's Recommendation 6 regarding the freezing of property of designated terrorists or terrorist associates without delay.

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

According to sections 4(1), (2) and (3) and 5(3) of Cap. 575, the notice or order on the specification of persons and property as terrorists, terrorist associates or terrorist property have to be published openly in the Gazette. If a member of the public is in doubt, he or she can check against the list of terrorists, terrorist associates and terrorist property published in the Gazette. Although the said notice and order will not name the person who holds the property on behalf of or at the direction of a terrorist or terrorist associate (the holder), a person will not be held liable under section 8A unless he has knowledge that (or is reckless as to whether) the property is held by the holder on behalf of, or at the direction of, a terrorist or terrorist associate.

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

The proposed application of section 11K to HKPRs is in line with the spirit of operative paragraph 6 of UNSCR 2178<sup>2</sup>, which requires, amongst others,

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<sup>2</sup> Operative paragraph 6 of UNSCR 2178 reads as follows –

“...decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense-

(a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other

states to prohibit travels of their “nationals” to another state. Making reference to the practices adopted in other jurisdictions, it is observed that other jurisdictions have implemented UNSCRs’ requirements through adaptation and localisation. Basically, they are obliged to fulfil the requirement the best they can and they would tailor the breadth of their provisions to suit their own circumstances. In amending Cap. 575 to implement UNSCR 2178, we are mindful of what would work most effectively to fulfil the objective of UNSCR 2178, and the need to strike a balance between the freedom to travel and the protection of public security.

The freedom to travel and to leave Hong Kong under Article 31 of the Basic Law and Article 8 of the Hong Kong Bill of Rights (BoR)<sup>3</sup> is not absolute. It may be subject to restrictions if such restrictions are provided by law and are necessary to protect legitimate interests such as national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the BoR.

Terrorists and terrorist activities have grave implications on all societies, and directly affect citizens’ life and properties. The proposed section 11K serves the legitimate aims of protecting public security and public order (*ordre public*) on both international and domestic levels. The preamble of UNSCR

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than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;

- (b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,
- (c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.”

<sup>3</sup> Article 8 of the BoR provides that –

“(1) Everyone lawfully within Hong Kong shall, within Hong Kong, have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave Hong Kong.

(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Bill of Rights.

(4) No one who has the right of abode in Hong Kong shall be arbitrarily deprived of the right to enter Hong Kong.”

2178 reaffirms that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security, and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed. The United Nations Security Council also expresses grave concern over the acute and growing threat posed by foreign terrorist fighters. Any activities relating to terrorism (including the travel for specified purpose) are an acute threat to national security to all nations around the world.

The proposed prohibition is rationally connected with the abovementioned legitimate aims. It is also no more than necessary to achieve these legitimate aims, and does not impair the very essence of the freedom to travel and to leave Hong Kong under Article 31 of the Basic Law or Article 8 of the BoR. A HKPR is only restricted from leaving Hong Kong to a foreign state if there is demonstrated evidence that he or she intentionally travel for specified purpose. This restriction is important and necessary to protect national security, international peace and public order (*ordre public*) in the fight against terrorism. The restriction is also proportionate and reasonable as the standard of proof is beyond reasonable doubt, and the onus of proof falls completely on the prosecution.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping loops and strokes, positioned above the printed name.

(Ms Iris Lee )  
for Secretary for Security

c.c. Department of Justice