

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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1 November 2017

Miss Betty MA
Clerk to Bills Committee on
United Nations (Anti-Terrorism Measures)
(Amendment) Bill 2017
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss MA,

Regarding the issues raised by the members and the deputations/individuals at the meeting held by the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 on 10 October 2017, the Government's responses are at Annex 1.

2. The Administration's responses to the submissions received by the Bills Committee are at Annex 2.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Iris Lee".

(Iris Lee)
for Secretary for Security

Encls.

**United Nations (Anti-Terrorism Measures)
(Amendment) Bill 2017
("the Bill")**

**Reponses to issues raised
at the Bills Committee's meeting on 10 October 2017**

**I. Interpretation and specification of "terrorists", "terrorist associates"
and "terrorist property"**

The Bill does not propose any amendment to the parts on interpretation and specification of "terrorists", "terrorist associates" and "terrorist property" under the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO") (Cap. 575), namely sections 2, 4 and 5 of UNATMO. Currently the Government does not see any need to make amendment to these sections.

"Terrorist act"

2. Under section 2 of UNATMO, "terrorist act" is defined as follows -

"(a) subject to paragraph (b), means the use or threat of action where -

- (i) the action is carried out with the intention of, or the threat is made with the intention of using action that would have the effect of -*
 - (A) causing serious violence against a person;*
 - (B) causing serious damage to property;*
 - (C) endangering a person's life, other than that of the person committing the action;*
 - (D) creating a serious risk to the health or safety of the public or a section of the public;*
 - (E) seriously interfering with or seriously disrupting an electronic system; or*
 - (F) seriously interfering with or seriously disrupting an essential service, facility or system, whether public or private; and*
- (ii) the use or threat is -*
 - (A) intended to compel the Government or an international organization or to intimidate the public or a section of the public; and*
 - (B) made for the purpose of advancing a political, religious or ideological cause;*

(b) *in the case of paragraph (a)(i)(D), (E) or (F), does not include the use or threat of action in the course of any advocacy, protest, dissent or industrial action”.*

3. When UNATMO was enacted in 2002, the definition of “terrorist act” was made with general reference to similar definition in the Terrorism (United Nations Measures) Order 2001 of the United Kingdom (“UK”) and the Anti-terrorism Act of Canada. In 2004, by making reference to the Terrorism Suppression Act 2002 of New Zealand, we enhanced the elements relating to the intention of “terrorist act” in order to narrow the scope of the definition. After the amendment, an act will fall within the meaning of “terrorist act” only if the person who does the act has the intention to cause serious consequences as a result of his act. In 2012, following the recommendations of the Financial Action Task Force (“FATF”), we expanded the ambit of “terrorist act” to include intended compulsion over an international organisation. The current definition provides a number of exceptions to exclude the use or threat of action in the course of any advocacy, protest, dissent or industrial action. The current definition complies with the provisions on human rights under the Basic Law and the Hong Kong Bill of Rights Ordinance, and has struck a balance between maintaining public security and individual right of expression.

“Terrorist”, “terrorist associate”, “terrorist property”

4. According to section 2 of UNATMO, a “terrorist” means a person who commits, or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act. A “terrorist associate” means an entity owned or controlled, directly or indirectly, by a terrorist. “Terrorist property” means (a) the property of a terrorist or terrorist associate; or (b) any other property that (i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or (ii) was used to finance or otherwise assist the commission of a terrorist act.

5. Sections 4 and 5 of UNATMO set out the mechanism for the specification of a “terrorist”, “terrorist associate” and “terrorist property”. In accordance with section 4 of UNATMO, following the list of terrorists and terrorist associates as specified by the United Nations Security Council, the Hong Kong Special Administrative Region (“HKSAR”) Government from time to time publishes the specified list under section 4 of UNATMO by means of a notice in the Gazette.

6. According to section 5 of UNATMO, the Chief Executive (“CE”) may apply to the court for an order to specify a person as a terrorist or terrorist associate, or a property as terrorist property. The court shall only make the order if it is satisfied, on the balance of probabilities, that the person is a terrorist

or terrorist associate or the property is terrorist property. CE shall then arrange the court order to be published in the Gazette. So far, the HKSAR Government has not invoked section 5 to specify any terrorist, terrorist associate or terrorist property.

7. If the HKSAR Government considers it necessary to specify a person as a terrorist or terrorist associate or a property as terrorist property with an intelligence received, the Administration must follow the mechanism in section 5, i.e. CE makes the application and the court makes the relevant order, and CE must arrange the relevant order to be published in the Gazette.

8. The current relevant provisions of UNATMO already ensure adequate protection for the persons affected by the specifications mentioned above. For instance, according to section 2(6)(a), without prejudice to the powers of the court under the Rules of the High Court, the court may, of its own motion or on application, order that any person who may be affected by an application under section 5 (in the case of an application under section 5(1) made inter partes) be joined as a party to the proceedings. As regards terrorists or terrorist associates who are specified in ex parte court proceedings, or persons who hold or are affected by terrorist property so specified, etc., they may at any time make an application to the court for revoking the specification order in accordance with section 17(1). In addition, subject to section 18, the person may apply to the court for compensation. Furthermore, according to section 21, proceedings inter partes shall be held in open court unless otherwise ordered by the court.

II. Prohibitions relating to travel for “specified purpose”

9. The United Nations Security Council Resolution (“UNSCR”) 2178 has expressed grave concern over the acute and growing threat posed by foreign terrorist fighters. In light of operative paragraph 6 therein, the proposed new sections 11K, 11L and 11M of the Bill specify the prohibitions on travel for “specified purpose”.

“Specified purpose”

10. According to UNSCR 2178, every state shall penalize certain acts involving travel for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts, or the provision or receiving of terrorist training. The proposed new section 11J of the Bill defines “specified purpose” as the perpetration, planning or preparation of, or participation in, terrorist acts; or the provision or receiving of training that is in connection with the perpetration, planning or preparation of, or participation in, terrorist acts.

11. Terrorist training is not defined in the current UNATMO. The “specified purpose” in the Bill, including “training that is in connection with the perpetration, planning or preparation of, or participation in, terrorist acts”, closely follows the spirit and expression of UNSCR 2178. It is linked to the definition of “terrorist act” under section 2 of UNATMO, and has referenced the relevant articulation about terrorist training in section 101.2 of the Australian Criminal Code Act 1995.

12. Whether a certain type of training fulfills the definition of “specified purpose” depends on evidence. Whether an act contravenes sections 11K, 11L and 11M depends on the presence of mens rea and its relevance to the “terrorist acts” under section 2 of UNATMO. Purely religious activities should and will not be groundlessly regarded as related to terrorist act and terrorist training.

Restriction on freedom to travel in conformity with provisions of the Basic Law and Hong Kong Bill of Rights

13. As stated in our reply letter to the Assistant Legal Adviser (“ALA”) of the Legislative Council (LegCo) dated 18 July 2017¹, the Government, in drafting the Bill, has been mindful of what would work most effectively to fulfill the objective of UNSCR 2178, and to strike a balance between the freedom to travel and the protection of public security. A succinct explanation as to how the new section 11K satisfies the proportionality test is set out in the last four paragraphs of that letter.

14. In ALA’s letter dated 12 July 2017², the following three cases which adopted the proportionality test were mentioned. In response to ALA’s view expressed at the first meeting of the Bills Committee on 21 July 2017, we further provide an analysis on the test in those three cases, as follows –

- (a) *Official Receiver & Trustee in Bankruptcy of Chan Wing Hing v Chan Wing Hing* (2006) 9 HKCFAR 545 (“*Chan Wing Hing*”);
- (b) *Official Receiver v Zhi Charles* (2015) 18 HKCFAR 467 (“*Zhi Charles*”); and
- (c) *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372 (“*Hysan*”).

15. In *Chan Wing Hing*, the Court of Final Appeal (“CFA”) recognized that the freedom to travel and leave Hong Kong as guaranteed under Article 31 of the Basic Law (“BL 31”) and Article 8 of the Hong Kong Bill of Rights (“HKBOR”) is not absolute and could be subject to restriction, provided that the

¹ LC Paper No. CB(2)1945/16-17(02).

² LC Paper No. CB(2)1945/16-17(01).

restriction satisfies two requirements, namely (i) it is provided by law; and (ii) the restriction satisfies all three limbs in the proportionality test (i.e. the restriction must: pursue one of the legitimate aims specified in Article 8(3) of HKBOR; be rationally connected to the legitimate aim; and be no more than necessary to achieve the legitimate aim).

16. The proportionality test which is applicable in the context of BL 31 and Article 8 of the HKBOR as described in the paragraph above was also affirmed by the CFA in *Zhi Charles*. In *Hysan*, the CFA mentioned the proportionality test which is applicable in the context of BL 31 and Article 8 of the HKBOR as adopted in *Zhi Charles*. The CFA expounded and developed this test by adding a fourth limb, asking whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual, in particular whether pursuit of the societal interest would result in an unacceptably harsh burden on the individual.

17. In the three cases mentioned in paragraph 14, the CFA adopted the same test, namely the proportionality test, in assessing whether the restriction placed on a constitutionally entrenched right was justified in the circumstances (*Chan Wing Hing* and *Zhi Charles* concerned the restriction placed on the right to travel as guaranteed under BL 31 and Article 8 of the HKBOR, while *Hysan* concerned the restriction placed on private property rights guaranteed under Articles 6 and 105 of the Basic Law).

18. In conducting the proportionality analysis, the Hong Kong courts have referred to the third limb of the proportionality test as posing the question of whether the encroaching measure is “no more than necessary” (the “minimal impairment” test) to achieve the legitimate aim. In *Zhi Charles*, the court explained the requirements of the “minimal impairment” test:

“...the law must be carefully tailored so that rights are impaired no more than necessary. The tailoring process seldom admits of perfection and the courts must accord some leeway to the legislator. If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement...”

19. The CFA in *Hysan* explained that the words “no more than necessary” in the third limb of the proportionality test did not lay down a *strict, bright* line test. They laid down a test of *reasonable* necessity.

20. It is noteworthy that whilst *Chan Wing Hing* and *Zhi Charles* also concerned restriction of the right to travel under BL 31 and Article 8 of the

HKBOR, the context in which they were decided by the CFA was very different from that of the proposed new section 11K. These two cases were concerned with ascertaining whether a reasonable balance could be struck between the effective administration of the bankrupt's estate and interests of the bankrupt's creditors on the one hand, and a bankrupt person's freedom to travel and to leave Hong Kong on the other hand. In these two cases, the CFA held that the impugned measure did not satisfy the proportionality test on the ground that it imposed a sanction on a bankrupt who was outside of Hong Kong regardless of the reasons for his absence from Hong Kong, and irrespective of whether his absence from Hong Kong had actually occasioned any prejudice to the administration of the estate.

21. In the situation of the proposed new section 11K, as terrorist activities pose serious threats to international peace and security, Hong Kong permanent residents ("HKPRs") are thus restricted from leaving Hong Kong for any "specified purpose" (i.e. perpetration, planning or preparation of, or participation in, terrorist acts, or the provision or receiving of terrorist training). This serves the legitimate aims of protecting public security and public order (*ordre public*) on both international and domestic levels, satisfying the first limb of the proportionality test. This prohibition does not impose a blanket restriction on HKPRs' freedom to leave Hong Kong, and it does not prohibit HKPRs from leaving Hong Kong regardless of their purpose and duration of travel. This prohibition only precludes a HKPR with genuine criminal intent from travelling between states to conduct terrorism-related activities for "specified purpose". Hence, it is rationally connected with the abovementioned legitimate aims, satisfying the second limb of the test. The proposed new section 11K is necessary to give effect to the relevant resolution of the United Nations.

22. As we all know, terrorist acts are very serious public hazards. The preamble of UNSCR 2178 also 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 motives, whenever and by whomsoever committed. In the Bill, we propose to prohibit HKPRs from leaving Hong Kong to a foreign state for "specified purpose". This will not affect their freedom of movement within Hong Kong. Neither will they be prohibited from leaving Hong Kong for other purposes. The proposed prohibition is no more than necessary to achieve the abovementioned legitimate aims, and does not impair the very essence of the freedom to travel and to leave Hong Kong under BL 31 and Article 8 of the HKBOR. The proposed prohibition has struck a reasonable balance between the demands of the general interest of the society in the protection of international and national security on the one hand, and an individual's rights

and freedom to travel and to leave Hong Kong for a lawful purpose on the other hand. This satisfies the third and fourth limbs of the proportionality test.

23. Besides, a HKPR commits an offence under section 11K only if there is demonstrated evidence that he intentionally travels for “specified purpose”. Under the criminal justice system of Hong Kong, accused persons are protected by the principle of presumption of innocence. In a criminal trial, the burden of proving the defendant’s guilt is on the prosecution and the standard of proof is beyond reasonable doubt. The court has to be satisfied beyond reasonable doubt in order to convict a defendant. This can effectively protect innocent people from being affected.

Proposed new section 11K apply to HKPRs only

24. As pointed out in our response on 3 October 2017³, this legislative proposal has been prepared in accordance with the purpose of UNSCR 2178 (i.e. countering foreign terrorist fighters) and having regard to the actual circumstances of Hong Kong. Drawing reference to the practices adopted by other jurisdictions, we noted that security measures would be customised to suit their own circumstances while ensuring close compliance with the requirements of the resolution.

25. The policy as articulated in the Bill focuses on the prevention of the preparation prior to travels related to terrorist acts or training. Offences of financing, organizing or facilitating these travels between states as mentioned in the legislative proposals aim at nipping such travels in the bud.

26. The United Nations did not elaborate on the meaning of “State of nationality” and “State of residence” mentioned in UNSCR 2178. Under the unique circumstances of Hong Kong, it is difficult to adopt these terms in UNATMO as they involve complicated technical issues.

27. Regarding the part involving “nationals” in paragraph 6(a)⁴ of UNSCR 2178, the relevant prohibition will be applicable to HKPRs for clarity and easy understanding. This will facilitate law enforcement.

³ LC Paper No. CB(2)2164/16-17(02).

⁴ Paragraph 6 of UNSCR 2178 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 penalise 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 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; ...”

28. Regarding the part targeting “other individuals” (such as non-HKPRs or visitors) in paragraph 6(a) of UNSCR 2178, the HKSAR Government will stop the entry or transit of such suspected persons as the first line of defence. According to section 4(1)(a) of the Immigration Ordinance (Cap. 115), officers of the Immigration Department (“ImmD”) may examine any visitor on his landing in Hong Kong. During the examination, ImmD officers will consider whether the visitor meets normal immigration requirements. Based on the information so obtained and the visitor’s individual circumstances and according to the law and established policies, ImmD will consider whether or not to allow his entry into Hong Kong.

29. Suspected persons who are physically in Hong Kong and have committed criminal offences will be apprehended by the HKSAR law enforcement agencies. As for those suspected persons who have not committed criminal offences but plan to leave Hong Kong, the HKSAR Government will notify the states of their destination in accordance with established international collaboration mechanisms, for appropriate enforcement actions to be taken. If relevant conditions are met, the states to which such suspected persons belong may make a request for surrendering fugitive offenders to Hong Kong.

Concerns of the tourism industry

30. We understand that the tourism industry is concerned about the proposed new section 11M. In this connection, we wish to explain that the proposed provisions of the Bill do not require service providers or any other persons to enquire their service targets about their purpose of travel before providing service. As indicated in our response dated 3 October 2017, the prosecution has to prove that at the time when the company or agency organized or facilitated, in whole or in part, the travel, it had the intention or knowledge that the travel would be for a specified purpose. The prosecution, who has the burden of proof, must base its case on facts and prove the matter beyond reasonable doubt. Similarly, the court will only convict a person of the offence where it can be proven beyond reasonable doubt that the person has committed the offence. In other words, the thresholds for both prosecution and conviction are very high. A company or an agency will only commit the new offence if it has the intention or knowledge that the travel between states will be for a specified purpose and it still organizes or facilitates it. The proposal targets at genuine criminals but not companies or agencies that abide by the law and conduct normal businesses.

31. The proposed prohibition targets at acts which are performed knowingly or with intention. As mentioned above, if a service provider has no knowledge of the purpose of travel, the law enforcement agencies can by no means charge them with the above offences. Of course, if a service provider finds the

purpose of his client's planned travel suspicious (e.g. there was a mention of joining Jihad), they should report to the Police as soon as possible so that the Police can take appropriate follow-up actions.

32. If the Bill is passed, we will brief the tourism industry on implementation arrangements of the provisions. Moreover, the Police will continue to strengthen its communication with the tourism industry. Where necessary, the tourism industry may report to the Police suspicious cases relating to the new offences in person, or by telephone, post, fax or email etc. In case of emergency, they can call 999. We will also provide the hotline⁵ of the Police's Organised Crime and Triad Bureau to the industry for more direct contact.

Enforcement of extra-territorial application

33. Extra-territorial application of the Bill, if passed, can be achieved by seeking assistance from places outside Hong Kong through international cooperation as provided for under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and the Fugitive Offenders Ordinance (Cap. 503). The suspect can also be arrested when he returns to Hong Kong.

III. Proposed prohibitions on dealing with certain property

Dealing with property

34. Under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "property" includes -

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition.

35. Moreover, under section 6(12) of UNATMO, "deal with" (in relation to property) means -

- (a) to receive or acquire the property;
- (b) to conceal or disguise the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) to dispose of or convert the property;
- (d) to bring into or remove from the HKSAR the property; or

⁵ The hotline number is 2527 7887.

- (e) to use the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise).

36. The proposed new section 8A is applicable to any person within the HKSAR, and any person outside the HKSAR who is a HKPR or a body incorporated or constituted under the law of the HKSAR. Any act falling within the scope of the proposed new section 8A, whether it involves property in or outside the HKSAR, is covered. Besides, the definition of “deal with” above will also apply to section 8A.

Restriction on right of private ownership of property

37. The proposed new section 8A relating to prohibition on dealing with property is based on the measures against terrorist property recommended by FATF. FATF’s Recommendation 6 requires that countries should comply with UNSCRs relating to the prevention and suppression of terrorism and terrorist financing, and freeze the property of specified terrorists or terrorist associates without delay. The proposed prohibition on dealing with property is considered an effective measure against the financing of terrorism, and is extensively implemented in the international community (including UK, Australia and Canada). As regards specific implementation arrangements, the prosecution shall prove that the person involved deals with the property even he knows that, or is reckless as to whether the property is a specified terrorist property, or whether the property is owned or controlled by, or held by a person on behalf of or at the direction of, specified terrorists or terrorist associates.

38. We consider that the relevant provisions serve and are rationally connected to a legitimate aim, imposing restrictions on specified individuals only and keeping the effects on them to the minimum. The restrictions are no more than necessary to achieve the legitimate aim and have struck a reasonable balance between countering terrorist financing and protecting private property rights. The restrictions are therefore not inconsistent with BL 6 and BL 105 which protect private property rights.

Disclosure

39. Section 12(1) of UNATMO stipulates that where a person knows or suspects that any property is terrorist property, then the person must disclose it to an authorized officer. The liability of disclosure of terrorist property under section 12 is established in accordance with FATF’s Recommendation 20 to allow the authority to know the movement of terrorist property for follow-up actions. However, if the person who does the act actively discloses the relevant information to the authorized officer as soon as practicable, he will not be considered committing an offence.

40. It may not be easy to identify a property which is owned or controlled by, held on behalf of or at the direction of, a specified terrorist. Therefore, we propose to add item (b) (property owned or controlled by a specified terrorist) and item (c) (property held by a person on behalf of or at the direction of a specified terrorist) of the new section 8A(1) to the relevant scope of section 12 in which a person does not commit an offence under certain circumstances, so as to protect the innocent and any third party acting in good faith. If a person suspects that a property is terrorist property, the most prudent approach is to disclose it to an authorized officer as soon as possible.

Protection for persons being affected

41. With reference to the current arrangement under section 6 of UNATMO, the Bill proposes that the Secretary for Security may grant a licence to give the authority for dealing with the property restricted by the new section 8A. The relevant provision is set out in section 15(1) of UNATMO. In general, consideration will be given to matters including whether it is for dealing with reasonable living or legal expenses or payment liable to be made under the Employment Ordinance as set out in section 15(1)(b) of UNATMO. Moreover, a person who is affected by the new section 8A may also apply to the court for a licence according to section 17(4).

IV. Implementation in other places

42. In the letter to ALA dated 18 July 2017, we have tabulated the relevant laws of common law jurisdictions to which reference was made in drafting the Bill.

Prohibition	Australia	Canada	UK
(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);

Prohibition	Australia	Canada	UK
			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)

43. In addition, Macao amended the Prevention and Suppression of Terrorism Crimes⁶ in May 2017. The Mainland has provided jurisprudential basis for a series of anti-terrorism measures through the Criminal Law of the People’s Republic of China, the Counterterrorism Law of the People’s Republic of China and the Opinions of the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security on Several Issues concerning the Application of Law in the Handling of Criminal Cases Involving Violent Terrorism and Religious Extremism.

⁶ http://bo.io.gov.mo/bo/i/2017/21/lei03_cn.asp

**United Nations (Anti-Terrorism Measures)
(Amendment) Bill 2017
("the Bill")**

Responses to the submissions received by the Bills Committee

The Administration has read in details the submissions received by the Bills Committee from deputations/individuals and noted them. The views in these submissions can be summarized as follows -

- (a) concerns about the definitions of "terrorist" and "terrorist act";
- (b) concerns about the restriction on freedom to enter or leave Hong Kong;
- (c) concerns about the application of the proposed new section 11K to Hong Kong permanent residents only;
- (d) concerns about the restriction on private ownership;
- (e) no need for legislation;
- (f) lack of publicity/consultation; and
- (g) concern on the abuse of power.

2. Items (a) to (d) above are similar to the views and questions raised at the meeting of the Bills Committee on 10 October 2017. The Administration's response to them are at Annex 1.

Need for Legislation

3. In September 2014, the United Nations Security Council Resolution ("UNSCR") 2178 was passed and is binding on all Member States. The resolution expresses grave concern about the acute and growing threat posed by foreign terrorist fighters, i.e. individuals who travel for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts, or provision or receiving of terrorist training; and urges Member States to implement legal sanctions against such travels and related matters. 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** (our italics) sufficient to provide the ability to prosecute and to penalise 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 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.”

4. Moreover, Recommendation 5 of the Financial Action Task Force (“FATF”) requires members to criminalise terrorist financing¹. Echoing UNSCR 2178, FATF expanded the ambit of Recommendation 5 in 2015 by extending the definition of terrorist financing to include financing the travel of foreign terrorist fighters. In its Guidance on Criminalising Terrorist Financing endorsed in October 2016, FATF urged members to ensure that these aspects

¹ According to FATF’s Recommendation 5, countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.

would be criminalised as a matter of urgent priority, given the serious threats posed by foreign terrorist fighters.

5. FATF's Recommendation 6² requires members to freeze without delay the funds or other assets of a person or entity designated as a terrorist or terrorist associate. In its fourth follow-up report on the Mutual Evaluation of Hong Kong in 2012, FATF pointed out that the freezing mechanism in section 6³ of the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO") (Cap. 575) was insufficient. As it stands, section 6 only operates against property specified in the freezing notice, and the freezing process involves several procedural steps which would lead to delays.

6. The Administration has provided the above justifications for introducing the Bill in the Legislative Council (LegCo) Brief⁴ issued in June 2017.

Publicity and Public Consultation

7. We briefed the LegCo Panel on Security about our proposals on 3 January 2017 and received general support from the Panel. We conducted a two-month public consultation exercise from 4 January to 3 March 2017. In addition to uploading the relevant consultation document to the website of the Security Bureau, we also issued letters to more than 40 organizations (including those in the financial sector, tourism sector, professional bodies and trade associations), and were invited to brief the Law Society of Hong Kong of the proposals on 9 March 2017. During the public consultation, 10 submissions

² According to FATF's Recommendation 6, countries should implement targeted financial sanctions regimes to comply with UNSCRs 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 UNSCR 1267 (1999) and its successor resolutions; or
- (b) designated by that country pursuant to UNSCR 1373 (2001).

³ According to section 6 of UNATMO, 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 shall not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary.

⁴ LC Paper No. SB CR 9/16/1476/74

were received. We submitted the Bill to the LegCo for first reading on 28 June 2017, and issued a LegCo brief and a press release. On 30 June 2017, LegCo set up the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 and an open and transparent Bills Committee process ensued. The Committee held a meeting with deputations on 10 October 2017, with 8 representatives of organizations/individuals attending the meeting and expressing views. The Committee also received more than 200 submissions. This testifies that the Bill has undergone ample publicity and consultation.

Concern on the abuse of power

8. The targets of the new prohibitions proposed in the Bill are those persons who leave Hong Kong or go on board a conveyance with the intention to leave Hong Kong for “specified purpose”, or those who finance, organize or facilitate travels for “specified purpose”. The new prohibitions target at acts which are done knowingly or with intention. Authorised officers will enforce the law according to their existing statutory power under the relevant ordinances and relevant provisions under UNATMO. In a criminal trial, the burden of proving the defendant’s guilt is on the prosecution and the standard of proof is beyond reasonable doubt. The Court must be satisfied beyond reasonable doubt in order to convict a defendant.