

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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15 November 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,

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

I refer to your letter dated 3 November 2017 on the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 (the Bill). Our reply is set out below.

2. The proposed section 11K of the Bill prohibits Hong Kong permanent residents (HKPRs) from travelling to 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 (“specified purpose”). As stated in our response on 3 October and 1 November 2017<sup>1</sup>, the legislative proposals have been prepared by the HKSAR Government with reference to the objectives of the

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<sup>1</sup> See LC Paper No. CB(2)2164/16-17(02) and CB(2)165/17-18(02).

United Nations Security Council Resolution (UNSCR) 2178<sup>2</sup> and in response to the actual circumstances of Hong Kong.

3. UNSCR 2178 did not elaborate on the “state of nationality” or “state of residence”. Neither are these expressions defined in the existing legislation of Hong Kong. If the Bill directly adopts the expressions “state of nationality” and “state of residence”, it may lead to complicated implementation issues. For example, if the suspected person claims that he has multiple nationalities, the law enforcement agencies (LEAs) will still have to determine his state of nationality. If a suspected person with Chinese nationality claims to have the nationality of another state and considers it as his state of nationality, LEAs must determine whether that person has given up his Chinese nationality, because according to Article 3 of the Nationality Law of the People’s Republic of China (PRC), PRC does not recognise dual nationality for any Chinese national. Besides, LEAs also need to consider how to determine a suspected person’s state of nationality or state of residence if a place involves sovereignty disputes (e.g. Crimea); or how to deal with a suspected person whose travel document cannot show his state of nationality or state of residence. Besides, if a suspected person claims to have ordinary residence or permanent resident status in more than one place, how LEAs should determine his state of residence, or whether LEAs need to consider a suspected person’s reason, duration and frequency of stay or whether he has ordinary residence in the state concerned in determining his state of residence; and how to verify the information claimed by that person if it is decided to consider the above factors. All the above involves complicated technical issues and would give rise to enforcement problems. It is difficult to directly and simply adopt “state of nationality” and “state of residence” in the Bill.

4. Paragraph 8 of UNSCR 2178 stated that “without prejudice to entry or transit necessary in the furtherance of a judicial process, including in furtherance of such a process related to arrest or detention of a foreign terrorist fighter, Member States shall prevent the entry into or transit through their territories of any individual about whom that State has credible information that provides reasonable grounds to believe that he or she is seeking entry into or transit through their territory for the purpose of participating in the acts described in paragraph 6 ... provided that nothing in this paragraph shall oblige any State to deny entry or require the departure from its territories of its own nationals or permanent residents”(our underline). We note that the expressions “nationals” and

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<sup>2</sup> Paragraph 6 of UNSCR 2178 decided 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; ...”

“permanent residents” are adopted in UNSCR 2178 to refer to persons who have close relation or connection with a state. For Hong Kong, we consider that “Hong Kong permanent residents” can serve such purpose, and is also in line with the spirit and representation of paragraph 6(a) of UNSCR 2178 on the prohibition of “their nationals” from travelling for “specified purpose”. It is also easy to understand and can facilitate enforcement.

5. Regarding “other individuals” (such as non-HKPRs or visitors) who travel for “specified purpose”, we will notify their states of destination in accordance with established international collaboration mechanisms for appropriate enforcement actions to be taken. If relevant conditions are met, the states to which the suspected persons belong may make request to Hong Kong for the surrender of fugitive offenders.

6. We have ensured that the proposed amendments comply with the Basic Law in the course of drafting the Bill. Article 24 of the Basic Law<sup>3</sup> specifies the criteria for obtaining HKPR status and granting HKPRs the right of abode in Hong Kong. It does not impose any requirement regarding to whom a particular statutory provision should apply. From the policy angle, we believe that as compared with non-HKPRs, HKPRs are more closely related to Hong Kong and would thus pose a higher risk to the safety of Hong Kong if they travel to foreign states for a “specified purpose” (such as commission of a terrorist act upon return

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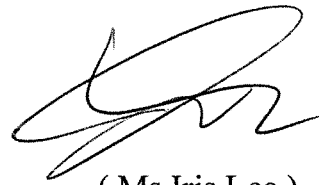
<sup>3</sup> Article 24 of the Basic Law: “Residents of the Hong Kong Special Administrative Region (‘Hong Kong residents’) shall include permanent residents and non-permanent residents. The permanent residents of the Hong Kong Special Administrative Region shall be:

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

The above-mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode. The non-permanent residents of the Hong Kong Special Administrative Region shall be persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the Region but have no right of abode.”

to Hong Kong after receiving terrorist training in a foreign state). Given the above policy concern, the proposed section 11K of the Bill will restrict HKPRs from leaving Hong Kong for a “specified purpose” in order to ensure the public security and public order of Hong Kong. Besides, as mentioned in paragraph 5 above, there are established international collaboration mechanisms to deal with non-HKPRs travelling to and from Hong Kong for a “specified purpose”. We therefore consider the proposed amendments are not inconsistent with Article 25 of the Basic Law<sup>4</sup>.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Iris Lee', written in a cursive style.

( Ms Iris Lee )  
for Secretary for Security

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<sup>4</sup> Article 25 of the Basic Law: “All Hong Kong residents shall be equal before the law.”