



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

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By Fax (2524 3762)

20 November 2017

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

Dear Ms LEE,

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

Further to your letter dated 15 November 2017 ("Letter") and the discussion at the Bills Committee meeting on 17 November 2017, we would like to seek the following information in respect of the proposed section 11K.

Legal justifications for the unequal treatment under the proposed section 11K

The proposed section 11K provides, among other things, that a Hong Kong permanent resident must not leave Hong Kong, or go on board a conveyance with the intention to leave Hong Kong, for a foreign state for a specified purpose. Contravention of the proposed section 11K is an offence and would be liable under the proposed section 14(4A) to a fine and imprisonment of seven years upon indictment, or on summary conviction to a fine at level 6 (i.e. \$100,000) and imprisonment for one year. However, a non-permanent resident of Hong Kong is not subject to the equal restriction and would not be caught by the proposed section 11K.

Under Article 31 of the Basic Law ("BL"), Hong Kong residents shall have freedom of movement within Hong Kong. According to Article 24 of BL, residents of Hong Kong include permanent and non-permanent residents. Article 25 of BL provides all Hong Kong residents shall be equal before the law. Therefore, Hong Kong permanent and non-permanent residents should enjoy the same freedom of movement. Freedom of movement and equality before

the law are similarly protected under Articles 8 and 22 of the Hong Kong Bill of Rights Ordinance (Cap. 383) in which Articles 12 and 26 of the International Covenant on Civil and Political Rights ("ICCPR") are enshrined.

Under Article 39 of BL, the provisions of ICCPR as applied to Hong Kong shall remain in force, and the rights and freedoms enjoyed by Hong Kong residents (including the freedoms and rights provided under Articles 8 and 22 of Cap. 383 and under Articles 25 and 31 of BL) shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of Article 39 of BL, including the provisions of ICCPR as applied to Hong Kong.

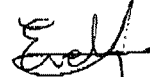
Please therefore explain why the unequal treatment is justified in the light of the provisions in the Basic Law and in Cap. 383 on freedom of movement and equality before the law and in the light of the judgment of the House of Lords in *A and others v Secretary of State for the Home Department* [2005] 2 AC 68 and the applicable principles referred to and test laid down in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372.

Implementation of the decision in paragraph 8 of the Resolution

In the Letter, the Administration made reference to paragraph 8 of UNSCR 2178 (2014) ("Resolution") where the United Nations Security Council ("UNSC") decided that Member States shall prevent the entry into or transit through their territories of *any individual* (our emphasis) 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 of the Resolution. Please clarify how the above unequal treatment addresses the decision of UNSC in the said paragraph 8.

As the next meeting of the Bills Committee will be held on 28 November 2017, please let us have your reply in both Chinese and English as soon as practicable, preferably by **24 November 2017**.

Yours sincerely,



(Evelyn LEE)

Assistant Legal Adviser

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