

(Letterhead of the Security Bureau)

(Translation)

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4 January 2018

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,

**Re: Fifth Meeting of the Bills Committee on  
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017**

At the captioned meeting on 20 December 2017, members requested the Administration to provide written information on some relevant issues. Our reply is set out below.

**New section 8A proposed in clause 5 of the Bill**

2. Some members were concerned about the difference between section 8 of the United Nations (Anti-Terrorism Measures) Ordinance (“UNATMO”) and the new section 8A proposed in clause 5 of the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 (“the Bill”). According to the new section 8A, a person must not deal with property of “terrorists or terrorist associates specified under section 4 or 5 of UNATMO”; whereas

section 8 of UNATMO provides that a person must not make property available to “terrorists or terrorist associates” without requiring such terrorists or terrorist associates to be specified under section 4 or 5 of UNATMO.

3. The Administration has explained the objective of the existing section 8 of UNATMO in the Legislative Council (“LegCo”) Brief submitted in 2002<sup>1</sup>. Section 8 of UNATMO aims at implementing the United Nations Security Council Resolution (“UNSCR”) 1373 and the relevant recommendations of the Financial Action Task Force (“FATF”). Paragraph 1(d) of UNSCR 1373 prohibits the making available of funds or assets for the benefit of “persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons”. Similar requirement has also been raised in the relevant FATF’s recommendations<sup>2</sup>.

4. As regards the objective of the Bill, it has been explained in our LegCo Brief submitted in 2017<sup>3</sup>. FATF’s Recommendation 6 requires members to impose targeted financial sanctions against terrorism and terrorist financing, and freeze without delay the funds or assets of “persons or entities specified as terrorists or terrorist associates”. The new section 8A proposed in the Bill is intended to implement the above recommendation, including prohibition on dealing with specified terrorist property.

5. It can be seen from the above that section 8 targets “terrorists or terrorist associates” (regardless of whether they are specified under section 4 or 5 of UNATMO) and prohibits a person from making property available to them; whereas section 8A targets property of “terrorists or terrorist associates specified under section 4 or 5 of UNATMO” as well as specified terrorist property and prohibits a person from dealing with these property. As the two

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<sup>1</sup> See LC Paper SB CR 2/16/1476/74.

<sup>2</sup> Under Special Recommendation III of the Special Recommendations on Terrorist Financing (i.e. Recommendation 5 subsequent to revision in 2012), FATF imposes the requirement for each state to criminalize the financing of terrorism, terrorist acts and terrorist organizations.

<sup>3</sup> See LC Paper SB CR 9/16/1476/74.

sections have different objectives, they cannot be directly compared and there is no need for amendment.

### **New section 11K proposed in clause 6 of the Bill**

6. The new section 11K proposed in the Bill is as follows -

*“(1) A Hong Kong permanent resident must not go on board a conveyance with the intention to leave the HKSAR, or a place outside the HKSAR, for a foreign state for a specified purpose.*

*(2) A Hong Kong permanent resident must not leave the HKSAR, or a place outside the HKSAR, for a foreign state for a specified purpose.”*

7. The objective of section 11K is to prohibit travel for a specified purpose. Section 11K(1) targets the act of “going on board a conveyance” by a person who has not yet travelled but has the intention of leaving for a foreign state for a specified purpose; whereas section 11K(2) targets the act of “leaving for a foreign state” for a specified purpose, regardless of whether the travel has occurred. A member suggested the Administration to amend section 11K(2) to “*A Hong Kong permanent resident must not leave the HKSAR, or a place outside the HKSAR, for a foreign state with the intention for a specified purpose.*” (suggested addition underlined). As section 11K(2) has already reflected that the person knows the connection of his act to the specified purpose and there is no ambiguity, and sections 11K(1) and (2) have different coverage on the travel for a specified purpose, we consider it not necessary to amend section 11K(2).

### **New sections 14(1A) and (4A) proposed in clause 8 of the Bill**

8. Some members were concerned that the new sections 14(1A) and (4A) proposed in clause 8 of the Bill do not provide the maximum fine for conviction on indictment. We wish to point out that the facts and the seriousness of each case may vary substantially. A more reasonable and proper approach is for the court to exercise its discretion to determine the appropriate amount of fine in accordance with the facts found and the

seriousness of the offence. Even if the amount or level of fine is not provided in UNATMO or the Bill, the court can refer to other legislation and impose a fine for an offence.

9. Section 113A of the Criminal Procedure Ordinance (Cap. 221) stipulates that where a person is convicted of any offence, other than an offence for which the sentence is fixed by law, the court may, if it is not precluded from sentencing him by the exercise of some other power, impose a fine, subject however to any enactment requiring him to be dealt with in a particular way. It is clear from case authorities that the court should, before imposing a fine, consider the offender's capacity to pay. The Administration does not have statistics on the fine imposed by the court in the past for conviction on indictment to imprisonment for 14 years.

**Amendment of “section 6(1) or 8” to “section 6(1), 8 or 8A” proposed in the Bill**

10. Some members were concerned that consequential to the addition of the new section 8A proposed in the Bill, whether all references to “section 6(1) or 8” in UNATMO will be amended to “section 6(1), 8 or 8A”. We confirm that the Bill has covered all necessary corresponding amendments.

Yours sincerely,

( Ms Iris LEE )  
for Secretary for Security