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**Paper for the House Committee Meeting
on 30 June 2017**

**Legal Service Division Report on
United Nations (Anti-Terrorism Measures)
(Amendment) Bill 2017**

I. SUMMARY

1. The Bill

The Bill seeks to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and other legislation to:

- (a) further implement a decision of the Security Council of the United Nations in its Resolution 2178 of 24 September 2014 by prohibiting travelling, providing or collecting property to finance travel, and organizing or facilitating travel, for the purpose of terrorist acts or terrorist training;
- (b) further implement the Recommendations of the Financial Action Task Force by prohibiting dealing with property relating to terrorists or terrorist associates;
- (c) create offences for contravening the prohibitions;
- (d) enable officers from certain disciplinary forces to exercise their existing statutory powers to enforce the prohibitions; and
- (e) make related amendments.

2. Public Consultation The Administration conducted a two-month public consultation exercise from January to March 2017 and briefed the Law Society of Hong Kong on the proposal on 9 March 2017. Ten written submissions were received and all were generally supportive.

3. Consultation with LegCo Panel The Panel on Security was briefed on the salient features of the legislative proposals on 3 January 2017. Panel members were generally supportive of the proposals, but some members expressed concerns on various issues.

4. Conclusion The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to impose new prohibitions to combat terrorism, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 28 June 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: SB CR 9/16/1476/74) issued by the Security Bureau in June 2017 for further details.

Object of the Bill

2. The Bill seeks to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and other legislation to:

- (a) further implement a decision of the Security Council of the United Nations ("UNSC") in its Resolution 2178 of 24 September 2014 ("Resolution 2178") by prohibiting travelling, providing or collecting property to finance travel, and organizing or facilitating travel, for the purpose of terrorist acts or terrorist training;
- (b) further implement the Recommendations of the Financial Action Task Force ("FATF") by prohibiting dealing with property relating to terrorists or terrorist associates;
- (c) create offences for contravening the prohibitions;
- (d) enable officers from certain disciplinary forces to exercise their existing statutory powers to enforce the prohibitions; and
- (e) make related amendments.

Background

3. At present, Cap. 575 provides for certain anti-terrorism measures for the prevention of terrorist acts.¹ By Resolution 2178, UNSC urged its

¹ The term "terrorist act" is defined in section 2(1) of Cap. 575. In gist, it means the use or threat of action where 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 causing serious violence against a person or danger to another person, causing serious damage to property, creating a serious risk to the health or safety of the public or seriously interfering with (or disrupting) an electronic system, an essential service or facility; and the use or threat is intended to compel the Government (or an international organization) or to intimidate the public and made for the purpose of advancing a political, religious or ideological cause. Members may wish to note that the definition of "terrorist act" is not proposed to be amended by the Bill.

Member States to implement legal sanctions against individuals who travel for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. FATF, of which Hong Kong is a member, is an intergovernmental organization which mainly sets standards and makes recommendations which a country should implement, by legal, regulatory and operational measures, for combating money laundering and terrorist financing. In October 2016, FATF urged its members to ensure that the financing of travel of foreign terrorist fighters would be criminalized. FATF is also concerned about the deficiencies of the existing freezing regime for terrorist funds or assets under Cap. 575. The Bill seeks to further implement Resolution 2178 and create offences in respect of terrorist financing.

Provisions of the Bill

4. The major amendments proposed by the Bill are set out in the ensuing paragraphs.

Amendment to the long title of Cap. 575

5. Clause 3 of the Bill seeks to amend the long title of Cap. 575 to provide for the object of further implementing a decision in Resolution 2178 relating to the prevention of travel for the purpose of terrorist acts or terrorist training.

Prohibition on dealing with terrorist property

6. The Bill seeks to add the new sections 8A and 14(1A) to Cap. 575 to the effect that a person must not, except under the authority of a licence granted by the Secretary for Security, directly or indirectly deal with any property if the person knows (or is being reckless as to whether) the property is:

- (a) terrorist property specified by the Chief Executive ("CE") or the Court of First Instance ("CFI") under section 4 or 5 of Cap. 575 (i.e. property of a terrorist or terrorist associate or any other property that is intended to be used to finance or otherwise assist the commission of a terrorist act; or was used to finance or otherwise assist the commission of a terrorist act);
- (b) wholly or jointly owned or controlled, directly or indirectly, by a terrorist (i.e. a person who commits, or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act) or terrorist associate (i.e. an entity owned or controlled,

directly or indirectly, by a terrorist) specified by CE or CFI under section 4 or 5 of Cap. 575; or

- (c) held by a person on behalf of, or at the direction of, a terrorist or terrorist associate specified under section 4 or 5 of Cap. 575.

7. Under the new section 14(1A), a person who contravenes the new section 8A would commit an offence and would be liable on conviction on indictment to a fine and to imprisonment for 14 years; or on summary conviction to a fine at level 6 (\$100,000) and to imprisonment for two years.

Prohibitions relating to travel for specified purpose

8. The Bill seeks to add the new sections 11J to 11M and 14(4A) to Cap. 575 to provide for prohibitions relating to travel for the purpose of perpetration, planning or preparation of, or participation in, one or more terrorist acts, or the provision or receiving of terrorist training in connection with the perpetration, planning or preparation of, or participation in a terrorist act, even if no terrorist act actually occurs ("specified purpose").

Prohibition on travelling for specified purpose

9. The new section 11K seeks to provide that a Hong Kong permanent resident must not go on board a conveyance with the intention to leave the Hong Kong Special Administrative Region ("HKSAR"), or a place outside the HKSAR, for a foreign state for a specified purpose. The section also seeks to prohibit such resident from leaving the HKSAR, or a place outside the HKSAR, for a foreign state for a specified purpose.

Prohibition on providing or collecting property to finance travel for specified purpose

10. The new section 11L seeks to provide that a person must not provide or collect any property, directly or indirectly, with the intention or the knowledge that the property would be used to finance the travel of any person between states for a specified purpose (whether or not the property is actually so used).

Prohibition on organizing or facilitating travel for specified purpose

11. The new section 11M seeks to provide that a person must not organize or facilitate, directly or indirectly, the travel of any person between states with the intention or knowledge that the travel would be for a specified

purpose, whether or not such travel is actually organized, facilitated or undertaken as contemplated by the person.

Offences and penalties

12. Under the new section 14(4A), a person who contravenes the new section 11K, 11L or 11M would commit an offence and would be liable on conviction on indictment to a fine and to imprisonment for seven years; or on summary conviction to a fine at level 6 (\$100,000) and to imprisonment for one year.

Extra-territorial application of certain new provisions

13. Clause 4 of the Bill seeks to provide for the extra-territorial effect of the new sections 8A, 11L and 11M so that they apply to a Hong Kong permanent resident (or a body incorporated or constituted under the law of the HKSAR) who is within or outside the HKSAR. The new section 11K would apply to a Hong Kong permanent resident in a place outside the HKSAR and thus a separate provision on extra-territorial effect is not necessary for the new section 11K.

Related amendments

14. Part 3 of the Bill seeks to provide for related amendments to the Rules of the High Court (Cap. 4A), the Independent Commission Against Corruption Ordinance (Cap. 204), the Immigration Service Ordinance (Cap. 331) and the Customs and Excise Service Ordinance (Cap. 342) to provide for the relevant court procedures and to provide the relevant bodies with enforcement powers relating to the proposed new offences.

Commencement

15. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Public Consultation

16. According to paragraph 13 of the LegCo Brief, the Administration conducted a public consultation exercise between 4 January 2017 and 3 March 2017, and briefed the Law Society of Hong Kong on 9 March 2017. Ten written submissions were received and all were generally supportive.

Consultation with LegCo Panel

17. The Clerk to the Panel on Security has advised that the Panel was briefed at its meeting on 3 January 2017 on the Administration's proposal to amend Cap. 575, having regard to the mandatory requirements in Resolution 2178 and views expressed by FATF. Members generally supported the legislative proposals, but raised various concerns including the impact of the legislative proposals on individual's freedom of travel, and the circumstances under which the Government would apply to the court for specifying a person as a terrorist.

Conclusion

18. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to impose new prohibitions to combat terrorism, Members may wish to form a Bills Committee to study the Bill in detail.

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