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on 23 February 2018**

**Report of the Bills Committee on United Nations  
(Anti-Terrorism Measures) (Amendment) Bill 2017**

**Purpose**

This paper reports on the deliberations of the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 ("the Bill").

**Background**

United Nations (Anti-Terrorism Measures) Ordinance

2. The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") was first enacted to implement the Resolution 1373 of the United Nations Security Council ("UNSC")<sup>1</sup> passed after the September 11 terrorist attacks in the United States in 2001, and certain recommendations of the Financial Action Task Force ("FATF")<sup>2</sup> on counter-financing of terrorism.

United Nations Security Council Resolution 2178

3. On 24 September 2014, UNSC passed its Resolution 2178 ("UNSCR 2178") which is binding on all Member States. UNSCR 2178 expressed grave

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<sup>1</sup> UNSCR 1373 was endorsed by UNSC on 28 September 2001. It required, among other things, the prevention and suppression of terrorist financing, criminalization of the wilful provision or collection of funds for terrorist acts, freezing of funds etc of terrorists or persons or entities acting on behalf of or at the direction of terrorists, and prohibition from making funds, etc. available for the benefit of terrorist or terrorist associate.

<sup>2</sup> FATF is an intergovernmental organization specializing in recommending standards and best practices in countering money laundering and terrorist financing. FAFT conducts Mutual Evaluation of its members from time to time to assess their levels of compliance with its recommendations.

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 providing or receiving of terrorist training, and required Member States to, inter alia, criminalize such travels and related matters. In October 2014, the Central People's Government gave instructions to Hong Kong to implement UNSCR 2178.

### Financial Action Task Force's Recommendations

4. Echoing UNSCR 2178, FATF expanded the ambit of its Recommendation 5<sup>3</sup> in 2015 by extending terrorist financing to include financing the travel of foreign terrorist fighters. Separately, in its fourth follow-up report on the Mutual Evaluation of Hong Kong in 2012, FATF was also concerned about the deficiencies of the existing freezing regime for terrorist property under section 6 of UNATMO.<sup>4</sup> 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.

### **The Bill**

5. The Bill seeks to amend UNAMTO and other legislation to:
- (a) further implement a decision of UNSCR 2178 passed on 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 FATF by prohibiting dealing with specified terrorist property and property of or held at the direction of specified 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

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<sup>3</sup> FATF's Recommendation 5 requires members to criminalize terrorist financing.

<sup>4</sup> 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.

(e) make related amendments.

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

### **The Bills Committee**

7. At the House Committee meeting on 30 June 2017, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon CHAN Hak-kan, the Bills Committee held six meetings with the Administration. The membership of the Bills Committee is in **Appendix I**. The Bills Committee has also received public views at one of its meetings. A list of organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

### **Deliberations of the Bills Committee**

8. In the light of Hong Kong's obligation to implement relevant UNSCRs and to comply with FATF's recommendations, members in general are in support of the legislative proposals put forward in the Bill. They have also raised various issues of concern.

### Interpretation and specification of terms

#### *Terrorist, terrorist act, terrorist associate and terrorist property*

9. Members have enquired about the meaning of the terms "terrorist" and "terrorist act", and whether "lone wolf" attacks and cyber terrorist act would be considered as terrorist acts under the Bill. Members have also enquired about the considerations taken into account by the Administration when determining the list of terrorists for the purpose of the Bill.

10. The Administration has stressed that the Bill does not propose any amendment to the parts on the interpretation and specification of "terrorist", "terrorist act", "terrorist associate" and "terrorist property" under sections 2, 4 and 5 of UNATMO. An act would amount to a terrorist act only if the conditions in paragraph (a) of the definition of "terrorist act" in section 2(1) of UNATMO are met. The definition also provides a number of exceptions to exclude the use or threat of action in the course of any advocacy, protest, dissent or industrial action in certain circumstances.

11. The Administration has further pointed out that 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(1) of UNATMO, following the list of terrorists and terrorist associates as specified by UNSC, the Chief Executive ("CE") may publish a notice in the Gazette specifying the name of a person who is designated by the Committee of UNSC as a terrorist. According to section 5 of UNATMO, 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 should only make the order if it is satisfied, on the balance of probabilities, that the person is a terrorist, terrorist associate or the property is terrorist property having regard to the relevant definitions in UNATMO and facts and circumstances of the case. In Hong Kong, terrorists have so far only been specified in accordance with the designations made by the procedures under section 4 of UNATMO.

12. Some members have further enquired whether relevant parties would be allowed to join in the relevant court proceedings for considering such application by the Administration under section 5 of UNATMO. The Administration has advised that the current relevant provisions of UNATMO already ensure adequate protection for the persons affected by the specifications made under sections 4 and 5. 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, 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 ceased to be specified as a terrorist may apply to the court for compensation. Furthermore, according to section 21, proceedings *inter partes* in respect of applications made under sections 5, 17 and 18 shall be held in open court unless otherwise ordered by the court.

### *Terrorist training*

13. Noting that the term "terrorist training" is adopted in the long title of the Bill, but it is not defined in the Bill or UNATMO, some members including Mr WU Chi-wai and Mr CHAN Chi-chuen have enquired about the meaning of "terrorist training" for the purpose of the Bill. These members are particularly concerned whether the attending of a religious lecture or retreat outside Hong Kong would constitute the attending of a terrorist training and whether the person concerned would be arrested upon return to Hong Kong.

14. The Administration has explained that the Bill targets at, inter alia, the person who leaves or goes on board a conveyance with the intention to leave Hong Kong for a specified purpose defined in the proposed new section 11J in

clause 6 of the Bill. The definition of "specified purpose" is linked to the definition of "terrorist act" under section 2 of UNATMO. An act would fall within the meaning of "terrorist act" only if the person carries out the act with the intention that it would have one of the effects provided under paragraph (a)(i)(A) to (F) of the definition and that the act is for the purpose provided under paragraph (a)(ii)(A) and (B) of the definition. The intended effects under paragraph (a)(i) include causing serious violence against a person or causing serious damage to property. A high threshold of severity in respect of the damage caused by (or attempted to be caused by) or injury inflicted (or attempted to be inflicted) by the act committed is required for an offence under the Bill. The definition also provides a number of exceptions to exclude the use or threat of action in the course of any advocacy, protest, dissent or industrial action in certain circumstances. Whether a certain type of training would amount to terrorist training would be determined having regard to facts of the case, the *mens reas* of the person concerned and whether such training is relevant to "terrorist act" defined under section 2 of UNATMO. Purely religious activities should and would not be groundlessly regarded as related to terrorist act or terrorist training.

15. To reflect clearly the objective of the Bill, some members including Mr James TO and Mr CHAN Chi-chuen have expressed concern about whether the term "terrorist training" in the long title of the Bill should be amended as "training for terrorist act". The Administration has advised that the primary aim of the Bill is to implement paragraph 6 of UNSCR 2178 in which "terrorist training" is adopted, it is therefore considered appropriate to follow the Resolution and adopt the same expression in the long title of the Bill without amendment.

#### Prohibitions relating to travel for specified purpose

16. Members note that clause 6 of the Bill seeks to add a new Part 3C (i.e. new sections 11J to 11M) to UNATMO. Under the proposed new section 11J, "specified purpose" means (a) the perpetration, planning or preparation of, or participation in, terrorist acts (even if no terrorist act actually occurs); or (b) the provision or receiving of training that is in connection with the perpetration, planning or preparation of, or participation in, terrorist acts (even if no terrorist act actually occurs as a result of the training). The Administration has advised that as training for terrorist acts evolves constantly with the ever-changing modus operandi of terrorist acts, adopting the expression "training that is in connection with...terrorist acts" would provide appropriate coverage to include any training related to "terrorist act" under the amended UNATMO.

17. Broadly, the proposed new sections 11K to 11M contain the following prohibitions relating to travelling for a specified purpose:

- (a) the proposed new section 11K prohibits a Hong Kong permanent resident ("HKPR") from travelling to a foreign state for a specified purpose;
- (b) the proposed new section 11L prohibits providing or collecting any property to finance the travel of a person between states for a specified purpose; and
- (c) the proposed new section 11M prohibits organizing or facilitating the travel of a person between states for a specified purpose.

*Restriction on freedom to travel*

18. Some members and some deputations giving views to the Bills Committee have expressed concern about whether the proposed prohibition on travel under the proposed new section 11K would be open to abuse of power by law enforcement agencies ("LEAs") and whether the restriction on freedom to travel is in conformity with relevant provisions of the Basic Law ("BL") and the Hong Kong Bill of Rights.

19. The Administration has advised that the prohibition on travel targets at acts which are done knowingly or with intention. This prohibition aims to preclude a HKPR with genuine specific criminal intent from travelling to a foreign state for a specified purpose to conduct terrorism related activities. Authorized officers<sup>5</sup> will enforce the law according to their statutory power under the relevant ordinances and relevant provisions under UNATMO. The proposed prohibition will not affect HKPRs' freedom of movement within Hong Kong. Neither will they be prohibited from leaving Hong Kong for lawful purposes. The proposed prohibition does not impair the very essence of the freedom to travel and to leave Hong Kong. The Administration considers that the proposed prohibition is reasonable and proportionate and is in conformity with Article 31 of BL and Article 8 of the Hong Kong Bill of Rights.

*The proposed new section 11K applicable to Hong Kong permanent residents only*

20. Noting that the proposed new section 11K would apply to HKPRs only, members have enquired about the rationale for the proposal and whether the requirements of UNSCR 2178 can be met. The legal adviser to the Bills Committee has also pointed out that contravention of the proposed new section 11K is an offence and would be liable under the proposed section 14(4A) to a

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<sup>5</sup> In gist, "authorized officers" is defined in UNATMO to mean (a) a police officer; (b) a member of the Customs and Excise Service; (c) a member of the Immigration Service; or (d) an officer of the Independent Commission Against Corruption.

fine and to imprisonment for seven years upon indictment, or on summary conviction to a fine at level 6 (\$100,000) and imprisonment for one year. A non-HKPR is, however, not subject to the same restriction and would not be caught by the proposed new section 11K. Furthermore, Articles 24 and 25 of BL provide that residents of the Hong Kong Special Administrative Region ("HKSAR") shall include permanent residents and non-permanent residents and all Hong Kong residents shall be equal before the law respectively. She has sought clarifications on the legal justifications for the differential treatment for HKPRs and non-HKPRs under the proposed new section 11K, and enquired whether the Administration has considered the proposed new section 11K in the light of Articles 24 and 25 of BL and how the proposed new section 11K, as drafted, complies with these Articles.

21. The Administration has explained that the Bill 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. It has also drawn reference to the relevant laws of and practices adopted by other jurisdictions, including Australia, Canada and the United Kingdom, and notes that security measures could be customized to suit their own circumstances while ensuring close compliance with the requirements of UNSCR 2178.

22. The Administration has drawn the attention of members to the use of the expressions "nationals" and "permanent residents" in UNSCR 2178 to refer to persons who have close relation or connection with a state. As compared with non-HKPRs, HKPRs are more closely related to Hong Kong and would thus pose a higher risk to the security of Hong Kong if they travel to foreign states for a specified purpose, such as commission of a terrorist act upon return to Hong Kong after receiving terrorist training in a foreign state. The Administration therefore considers that for Hong Kong, the use of the term "HKPR" under the proposed new section 11K is in line with the letter and spirit 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. The Administration has stressed that its policy intent is to nip any travel for a specified purpose in the bud as early as possible.

23. Responding to the enquiry of the legal adviser to the Bills Committee about compliance with BL, the Administration has pointed out that Article 24 of BL 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. The differential treatment for HKPRs and non-HKPRs under the proposed new section 11K is primarily based on a person's residence status. Having regard to the policy considerations, the proposed new section 11K will only restrict HKPRs from leaving Hong Kong for a specified purpose, which strikes a reasonable balance between protecting the public security and public order of Hong Kong on the

one hand, and safeguarding an individual's freedom to travel and to leave Hong Kong on the other. The Administration therefore considers the proposed amendments are not inconsistent with Article 25 of BL.

24. The Administration has further advised that the United Nations did not elaborate on the meaning of "state of nationality" and "state of residence" mentioned in UNSCR 2178. If the Bill directly adopts the expressions "state of nationality" and "state of residence" used in UNSCR 2178, it may lead to complicated implementation issues. For instance, 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 recognize dual nationality for any Chinese national. Besides, if a suspected person claims to have ordinary residence or permanent resident status in more than one place, LEAs would 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. It is therefore difficult to directly and simply adopt "state of nationality" and "state of residence" in the Bill.

*Enforcement of the prohibitions relating to travel against non-HKPRs*

25. Some members have expressed concern whether the exclusion of non-HKPRs and visitors from the proposed new section 11K would create loopholes in anti-terrorism work and impact on the effectiveness of the Bill. The legal adviser of the Bills Committee has also referred to the operative paragraphs 6 and 8 of UNSCR 2178 which are sought to be implemented by the Bill. She has pointed out that UNSC has decided, under the said paragraphs, a Member State shall also ensure and prevent any individual (not just nationals) from participating in, supporting and travelling for the purposes relating to terrorist acts which are referred to in the said paragraphs and enquired whether and how the Bill, as drafted, implements the decision insofar as the above duty of Member States are concerned.

26. The Administration has advised that 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) ("IO"), 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. Suspected persons who are physically in Hong Kong and have committed



criminal offences will be apprehended by LEAs. As for those suspected persons who have not committed criminal offences in Hong Kong 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.

27. Some members have further enquired about whether non-HKPRs, including those who are holders of valid One-way Permits but have not ordinarily resided in Hong Kong for a continuous period of not less than seven years, can be deported. The Administration has explained that according to section 20(1) of IO, which is applicable to all non-permanent residents, a non-permanent resident may be deported if he has been found guilty of an offence punishable with imprisonment for not less than two years or CE deems it to be conducive to the public good.

*Requisite knowledge and intention of acts*

28. Some members including Mr James TO and Mr WU Chi-wai have expressed the view that, for avoidance of doubts, it should be spelt out explicitly in the proposed new section 11J that a person should know the connection of his act to a specified purpose.

29. The Administration has explained that the proposed new section 11J is an interpretation provision which aims to set out the meaning of "specified purpose". The purpose is to make the proposed new sections 11K, 11L and 11M easier to read and understand. The Administration takes the view that when a person acts for a specified purpose, it has already reflected that the person knows the connection of his act to the specified purpose, and that the person has the intention of achieving the specified purpose. As there is no ambiguity, the Administration does not see the need to amend the proposed new section 11J.

30. Mr James TO has further enquired why the prohibition under the proposed new section 11K(1) would be imposed only when a HKPR goes on board a conveyance "with the intention" to leave HKSAR, or a place outside HKSAR, for a foreign state for a specified purpose, whereas the prohibition imposed under the proposed new section 11K(2) does not require the element of "with the intention". Mr TO has expressed concern that the proposed new section 11K(1) and (2), as drafted, may render the prohibition under the proposed new section 11K(2) to have a lower threshold than the proposed new section 11K(1) in respect of the intention requirement. He has therefore suggested that the Administration should make reference to the wording in the proposed new section 11K(2) and delete the term "with the intention" from the proposed new section 11K(1).

31. The Administration has explained that the objective of the proposed new section 11K is to prohibit travel for a specified purpose. The proposed new 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. As such, once a HKPR goes on board a conveyance "with the intention to leave HKSAR for a foreign state for a specified purpose", he will have committed the offence contrary to the proposed new section 11K(1), regardless of whether that conveyance will, in fact, leave HKSAR for a foreign state. However, if the term "with the intention" is deleted, there will be an ambiguity which will be open to possible argument that the prohibition under the proposed new section 11K(1) would only cover those people who go on board a conveyance "to leave HKSAR for a foreign state for a specified purpose". In other words, if a HKPR who goes on board a conveyance which will, in fact, not leave HKSAR for a foreign state, such person may not be caught by the proposed new section 11K(1) offence even though he has the intention "to leave HKSAR for a foreign state for a specified purpose". In view of this, the Administration considers that it is necessary to retain the term "with the intention" in the proposed new section 11K(1).

32. The Administration has further explained that the proposed new section 11K(2), however, targets the act of "leaving for a foreign state" for a specified purpose, regardless of whether the travel has occurred. As the proposed new section 11K(2) has already reflected with no ambiguity that the person knows the connection of his act to the specified purpose, it is not necessary to use the term "with the intention". In the view of the Administration, the proposed new sections 11K(1) and (2) have different coverages, and hence cannot be directly compared and there is no need for amendment.

#### *Travel destinations covered*

33. Some members have enquired about whether the proposed new section 11K would apply to travels from Hong Kong to Taiwan or Macau for a specified purpose. The Administration has pointed out that according to the definition in the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO"), "a foreign state" adopted in the proposed new section 11K should be construed as any state other than "the People's Republic of China". It is defined under IGCO that PRC "includes Taiwan, the Hong Kong Special Administrative Region and Macau". As the spirit of UNSCR 2178 is to require all Member States to build a worldwide anti-terrorism network against travels of terrorists between different states, it does not cover travels within a state. Regarding travels within PRC involving terrorist activities, appropriate enforcement actions may be taken through the established police co-operation mechanism between Hong Kong and the relevant place in PRC.

### Prohibitions on dealing with certain property

34. Members note that clause 5 of the Bill seeks to add new section 8A to UNATMO to prohibit a person from dealing with specified terrorist property and property of or held at the direction of a specified terrorist or terrorist associate. Members have enquired whether it is necessary to define in the Bill the term "property".

35. The Administration has advised that although "property" is not defined in UNATMO, reference can be made to its definition in IGCO. The term "deal with" in relation to property is defined in section 6(12) of UNATMO and the definition would apply to the proposed new section 8A. The Bill will not change the definition of "deal with". In addition, provisions on freezing of assets are set out in section 6 of UNATMO and provisions on disclosure of knowledge or suspicion that property is terrorist property are set out in section 12 of UNATMO.

36. Some members have expressed the view that it would be unfair to prohibit a person who is a family member of a terrorist from dealing with property owned jointly by the terrorist and the family member, if the property is not derived from proceeds of crime and terrorist activities. They also consider it unfair to prohibit a person who has already served his sentence for terrorist activity from dealing with property which is not derived from proceeds of crime and terrorist activities in a bid to meet his own living and medical expenses. The Administration has responded that under section 6 of UNATMO, the Secretary for Security may grant a licence for dealing with terrorist property under certain conditions and exceptions. Section 15 of UNATMO has set out the conditions and exceptions which may be specified in such a licence. Such exceptions may relate but are not limited to reasonable living expenses, reasonable legal expenses and payments liable to be made under the Employment Ordinance (Cap. 57).

### *Legal effect and drafting of the proposed new section 8A*

37. Some members have enquired why the prohibitions under the proposed new sections 8A(1)(b) and (c) would only be imposed in respect of property relating to a terrorist or terrorist associate specified in a notice or an order published in the Gazette pursuant to section 4 or 5 of UNATMO, whereas the prohibition relating to property under the existing section 8 of UNATMO is imposed without reference to section 4 or 5 of UNATMO. These members have further enquired whether the legal effect of section 8 and the proposed new section 8A is intended to be different in the light of the above difference in drafting.

38. The Administration has advised that the proposed new section 8A is intended to implement FATF's Recommendation 6 to freeze without delay the property of designated terrorists or terrorist associates specified under section 4 or 5 of UNATMO. The proposed new sections 8A(1)(b) and (c) seek to address the deficiencies of the existing section 6 of UNATMO by imposing a prohibition on dealing with any property of terrorists or terrorist associates specified under section 4 or 5. Section 8 of UNATMO is, however, intended to implement (a) UNSCR 1373 which requires, among other things, the prohibition from making funds, etc. available for the benefit of any terrorists or terrorist associates; and (b) FATF's Recommendation 5 on criminalizing the financing of terrorism and associated money laundering. In other words, 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 the proposed new section 8A targets property of or held at the direction 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. Therefore, the proposed new section 8A is not directly comparable with the existing section 8 of UNATMO as the two sections have different objectives.

39. As a related issue, members note that clauses 11 to 14 of the Bill seek to amend sections 12, 15 and 17 of UNATMO respectively to extend the application of those sections to the proposed new section 8A. Mr James TO has expressed the view that to facilitate understanding, the Administration should take the opportunity to amend the phrase "may relate but are not limited to" in the existing section 15(1)(b) of UNATMO to read as "may relate to any expenses, but are not limited to". He may consider proposing an amendment to this effect. The Administration takes the view that the meaning of the provision is clear and there is no need for Mr TO's suggested amendment.

#### Offences and penalties

40. Clause 8 of the Bill seeks to amend section 14 of UNATMO to provide for offences and penalties for the proposed prohibition provisions. Members note that the proposed section 14(1A) provides that a person who contravenes the proposed 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. Members also note that under the proposed section 14(4A), a person who contravenes the proposed 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.

41. Some members have expressed concern that the proposed sections 14(1A) and (4A) do not specify the maximum fine for conviction on indictment. They have enquired about the need for specifying the level or amount of fines in the proposed sections 14(1A)(a) and (4A)(a) and whether there are guidelines to the court on the determination of fines upon a defendant's conviction in case where the relevant legislation does not provide for the amount or level of fine to be imposed.

42. The Administration has advised that as 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 established 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. For instance, 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 the person by the exercise of some other power, impose a fine, subject however to any enactment requiring the person 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.

#### *Concern of the travel industry*

43. Some members including Mr Paul TSE and Mr YIU Si-wing have pointed out that the proposed new section 11M seeks to prohibit organizing or facilitating travel for a specified purpose, regardless of whether the travel is eventually completed. These members have sought clarification as to whether an airline company or a travel agency would commit an offence under the Bill in case where the company or agency has organized, or made arrangement to facilitate, a customer's travel during its ordinary course of business (such as by selling tickets to its customer and/or making reservations at a hotel for its customer) and only discovers that the customer is leaving Hong Kong for a specified purpose after the travel arrangements have been made for that customer.

44. The Administration has explained 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. 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 would only convict a person of the offence where it has been 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 would only contravene the proposed new section 11M(1) 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 Administration has stressed that the legislative proposal targets at genuine criminals but not companies or agencies that abide by the law and conduct normal businesses.

45. The Administration has further advised that after passage of the Bill, the Police would step up communication with the travel industry and provide the industry with information in relation to the new offences. If a service provider finds the purpose of his client's planned travel suspicious, they should report to the Police as soon as possible so that the Police can take appropriate follow-up actions.

#### Extra-territorial application of the Bill

46. Members note that clause 4 of the Bill seeks to amend section 3 of UNATMO such that the prohibitions provided in the proposed new sections 8A, 11L and 11M also have extra-territorial effect. A person within HKSAR, as well as a HKPR or HKSAR-incorporated body outside HKSAR, would be prohibited from financing, organizing or facilitating the travel of individuals between states with the intention or knowing that the travel is for a specified purpose. Members also note that it is spelt out explicitly in the proposed new section 11K that the prohibition stated therein is applicable to any HKPR inside or outside HKSAR.

47. On the operation of the extra-territorial application of the Bill, the Administration has advised that it can be enforced through international cooperation as provided for under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). A request may be made on the basis of a bilateral mutual legal assistance agreement or a multilateral treaty applicable to Hong Kong and the requested party, or, where there is no applicable bilateral or multilateral agreement, on a reciprocal basis. Besides, under the Fugitive Offenders Ordinance (Cap. 503), the HKSAR Government may make a request for surrender of a fugitive on the basis of a bilateral agreement on surrender of fugitive offenders or a multilateral treaty applicable to Hong Kong and the requested party, or, where there is no applicable bilateral or multilateral agreement, under the circumstances where such surrender is permitted by the law of the requested party. Any request will be handled in accordance with the provisions of the applicable agreement and the law of the requested party.

### Related amendments

48. Part 3 of the Bill (i.e. clauses 11 to 14 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) ("ICACO"), 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 authorized officers with enforcement powers relating to the proposed new offences.

#### *Power of arrest of the Independent Commission Against Corruption ("ICAC")*

49. Members generally consider that anti-terrorism work should primarily be carried out by the Police, as they possess the relevant expertise and network and have undergone relevant training and formed a dedicated anti-terrorism unit. Some members including Mr James TO have expressed concern that as the expertise of ICAC is fighting and preventing corruption, instead of anti-terrorism, ICAC should not be given additional power under ICACO after the passage of the Bill. Furthermore, overlapping of work between LEAs should be avoided and coordination of anti-terrorism work among relevant LEAs should be enhanced.

50. The Administration has advised that presently ICAC is already one of the four authorized officers designated under UNATMO to enforce the relevant provisions in UNATMO. To facilitate enforcement, it is considered necessary to provide for the corresponding power to ICAC under ICACO to deal with the new offences proposed by the Bill. While anti-terrorism work will continue to be led by the Police, there is a need for ICAC to take prompt actions against terrorist activities detected during its course of investigation of offences under its purview, e.g. corruption.

51. The Administration has further advised that as stated in the 2017 Policy Address, a dedicated Inter-departmental Counter-terrorism Unit ("the Unit") will be established in the 2018-2019 financial year to enhance the coordination work on anti-terrorism. Led by the Police and composed of members of relevant LEAs, the Unit will serve as the anti-terrorism network and platform of LEAs to monitor the global terrorism trend and regimes on countering terrorism, review and improve anti-terrorism strategies in Hong Kong, and formulate measures and action plans in collaboration with relevant departments. The Administration would convey members' views and concerns regarding the coordination of anti-terrorism work among relevant LEAs to the Unit.

### **Amendments proposed to the Bill**

52. The Bills Committee and the Administration will not propose any amendments to the Bill.

### **Resumption of Second Reading debate**

53. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 21 March 2018.

### **Advice sought**

54. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2  
Legislative Council Secretariat  
22 February 2018



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

**Membership list\***

**Chairman** Hon CHAN Hak-kan, BBS, JP

**Members** Hon James TO Kun-sun  
Hon Paul TSE Wai-chun, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon CHAN Chi-chuen  
Hon Kenneth LEUNG  
Dr Hon Elizabeth QUAT, BBS, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon YUNG Hoi-yan  
Hon CHAN Chun-ying

(Total : 17 members)

**Clerk** Ms Betty MA

**Legal adviser** Ms Evelyn LEE

\* Changes in membership are shown in Annex to Appendix I.

## Annex to Appendix I

### **Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017**

#### **Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon Wilson OR Chong-shing, MH	Up to 8 October 2017
Hon Jimmy NG Wing-ka, JP	Up to 16 November 2017

According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.

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

I. List of organizations and individuals which/who have given views to the Bills Committee:

1. Dr CHEN Chapman
2. Lab in Hong Kong
3. Mr CHOON Yew-knee
4. Mr LI Chi-keung
5. Mr Tony PANG Chor-fu
6. Ms Sally YEUNG Ching
7. The Hong Kong Chinese Importers' & Exporters' Association
8. 香港中國旅遊協會

II. List of organizations and individuals which/who have provided written submissions only is available on the following Legislative Council website:

<http://www.legco.gov.hk/yr16-17/english/bc/bc59/agenda/bc5920171010-ag-app.htm#attend>