

**Drug Trafficking and Organized Crime
(Amendment) Bill 2000**

At the Bills Committee meeting on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 (DTCOC Bill) held on 24 June 2002, at Members' request, the Administration agreed to move a Committee Stage Amendment (CSA) on legal professional privilege, having regard to the one which would be proposed on the same subject in the context of the United Nations (Anti-Terrorism Measures) Bill (the UN Bill). This note sets out the Administration's considerations in this regard.

Existing Provisions

2. The present section 22 of the Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP)(Cap 405) and section 2 of the Organized and Serious Crimes Ordinance (OSCO)(Cap 455) concern "items of legal privilege". Section 22 of the DTROP stipulates that : -

“"items subject to legal privilege" means-

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made-
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in the possession of a person who is entitled to

possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose;”

3. The wordings of section 2 of OSCO in respect of "items subject to legal privilege" are identical with those of section 22 of DTROP, except for some minor differences towards the end :-

“ when they are in the possession of a person who is entitled to possession of them, but excludes any such communications or items held with the intention of a criminal purpose; ”

4. Section 22 of DTROP is applicable to sections 20 and 21 of the same Ordinance (see Annex A), while "items subject to legal privilege" in section 2 of OSCO is applicable to sections 3, 4 and 5 of the same Ordinance (see Annex B). Both sections are similar in nature and they both serve policy objectives relating to investigation, search and production of materials to authorised officers. The scope of both sections are extensive and comprehensive.

Proposal under the UN Bill

5. The latest CSA on legal professional privilege proposed in the UN Bill is at Annex C. The proposal has been drawn up after taking into account the views expressed by deputations, mainly by JUSTICE, the Hong Kong section of the International Commission of Jurists, and is based on section 17T of the New Zealand "Terrorism <Bombing and Financing> <Suppression> Bill" which has yet to be passed (Annex D). As the scrutiny of the UN Bill is still in progress, it is not certain how the final shape of this proposal will be. Notwithstanding this, it must be stressed that the circumstances and considerations involved in the proposal in respect of the UN Bill are different from the DTOC Bill. While the DTOC Bill seeks to amend the provisions in DTROP and OSCO, the UN Bill is meant to be a completely new legislation enabling Hong Kong's role as an effective partner in the global fight against terrorists, terrorist financing and terrorist activities. In addition, there are existing detailed provisions referring to legal privilege in DTROP and OSCO, while in the UN Bill there was none until the current CSA so

provides. At present, it is difficult to assess whether the proposed amendment to the UN Bill would be finalized in time for referencing by the DTOC Bill. There is also the question of whether a mere adoption of the provision in the UN Bill would dovetail with the existing provisions in DTROP and OSCO.

Administration's Proposals

6. Having regard to the above considerations, the Administration proposes the following options :-

(a) to defer the CSA on legal privilege for the time being and go ahead with Resumption of Second Reading Debate without this CSA. This allows amendment at a later stage and better dovetailing with the same provision in the UN Bill;

(b) to add a general provision to section 2 of DTROP and OSCO as follows :-

“It is hereby declared that nothing in this Ordinance shall restrict the law applicable to legal professional privilege.”

This proposal reflects accurately the common law position regarding legal privilege. By adding it in the "Interpretation" section of the two Ordinances, it applies to all relevant provisions in the Ordinances and can immediately alleviate concerns as to whether lawyers are protected under section 10 (on restraint orders), section 11 (on charging orders) and section 25A (on reporting of suspicious transactions) of DTROP and like provisions in OSCO; and

(c) to add a provision under sections 10, 11 and 25A of DTROP and the like provisions in OSCO, i.e. sections 15, 16 and 25A, to the effect that these provisions shall not restrict legal privilege, and define "legal privilege" therein by mirroring the existing "items subject to legal

privilege". This option, though clumsy, should still serve the policy intent of highlighting legal privilege in both Ordinances.

Security Bureau
June 2002

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Section of Enactment

Chapter : 405 Title : DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE Gazette Number : 25 of 1998 s. 2
Section : 22 Heading : **Supplementary provisions to sections 20 and 21** Version Date : 01/07/1997

Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1) An authorized officer may photograph or make copies of any material-

(a) produced or to which access is given under section 20; or

(b) seized under section 21.

(2) In sections 20 and 21-

"court" (法庭) means the Court of First Instance and the District Court; (Amended 25 of 1998 s. 2)

"items subject to legal privilege" (享有法律特權的品目) means-

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made-

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose;

"premises" (房產) includes any place and, in particular, includes-

(a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and

(b) any tent or movable structure.

[cf. 1986 c. 32 s. 29 U.K.]

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Section of Enactment

Chapter : 405

Title : DRUG TRAFFICKING (RECOVERY
OF PROCEEDS) ORDINANCE

Gazette Number :

Section : 20

Heading : **Order to make material available**

Version Date : 30/06/1997

PART IV

INVESTIGATIONS INTO DRUG TRAFFICKING

(1) An authorized officer may, for the purpose of an investigation into drug trafficking, apply to a court for an order under subsection (2) in relation to particular material or material of a particular description.

(2) Subject to section 23(10), the court may, if on such an application it is satisfied that the conditions in subsection (4) are fulfilled, make an order-

(a) that the person who appears to the court to be in possession or control of the material to which the application relates shall-

(i) produce the material to an authorized officer for him to take away; or

(ii) give an authorized officer access to it,

within such period as the order may specify;

(b) that the person who appears to the court likely to come into possession or control of the material to which the application relates shall, when the person comes into possession or control of any such material-

(i) produce the material to an authorized officer for him to take away; or

(ii) give an authorized officer access to it,

within such period as the order may specify; or

(c) in terms both of paragraphs (a) and (b). (Replaced 89 of 1995 s. 18)

(2A) An order under subsection (2), in so far as it is in terms of paragraph (b) of that subsection, shall cease to have effect upon the expiration of 3 months after the day on which the order is made, or upon the expiration of such lesser period, if any, as is specified in the order for the purpose, but nothing in this subsection shall-

(a) affect any obligation incurred under that order prior to its expiration;

(b) prevent, in relation to the person required to comply with that order, any further order being made under that subsection in respect of that person (including before the expiration of that first-mentioned order). (Added

89 of 1995 s. 18)

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are-

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that there are reasonable grounds for believing that the material to which the application relates-

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard-

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person-

(A) in possession or control of the material holds or controls it, as the case may be; or

(B) likely to come into possession or control of the material will hold or control it, as the case may be, if he comes into such possession or control,

as the case may be. (Replaced 89 of 1995 s. 18)

(5) Where a court makes an order under subsection (2)(a)(ii) or (b)(ii) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to him to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material. (Amended 89 of 1995 s. 18)

(6) Rules of court may provide for-

(a) the discharge and variation of orders under this section; and

(b) proceedings relating to such orders.

(7) Where the material to which an application under this section relates consists of information contained in or accessible by means of any data equipment-

(a) an order under subsection (2)(a)(i) or (b)(i) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and (Amended 89 of 1995 s. 18)

(b) an order under subsection (2)(a)(ii) or (b)(ii) shall have effect as an order to give access to the material in a form in which it is visible and legible. (Amended 89 of 1995 s. 18)

(8) In subsection (7), "data equipment" (數據設備) means any equipment which-

(a) automatically processes information;

(b) automatically records or stores information;

(c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);

(d) can be used to retrieve information, whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated).

(9) An order under subsection (2)-

(a) shall not confer any right to production of, or access to, items subject to legal privilege;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and

(c) may be made in relation to material in the possession of a public body as defined in section 23.

(Enacted 1989)

[cf. 1986 c. 32 s. 27 U.K.]

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Section of Enactment

Chapter : 405

Title : DRUG TRAFFICKING
(RECOVERY OF PROCEEDS)
ORDINANCE

Gazette Number :

Section : 21

Heading : **Authority for search**

Version Date : 30/06/1997

- (1) An authorized officer may, for the purpose of an investigation into drug trafficking, apply to a court for a warrant under this section in relation to specified premises.
- (2) On such application the court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied-
- (a) that an order made under section 20 in relation to material on the premises has not been complied with; or
 - (b) that the conditions in subsection (3) are fulfilled; or
 - (c) that the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in subsection (2)(b) are-
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
 - (b) that the conditions in section 20(4)(b) and (c) are fulfilled in relation to any material on the premises; and
 - (c) that it would not be appropriate to make an order under that section in relation to the material because-
 - (i) it is not practicable to communicate with any person entitled to produce the material; or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) are-
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized; and
 - (c) that-
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.
- (5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.
- (6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable-
- (a) on conviction upon indictment to a fine of \$250000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine of \$50000 and to imprisonment for 6 months.

(7) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. (Added 88 of 1995 s. 5)

(Enacted 1989)

[cf. 1986 c. 32 s. 28 U.K.]

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between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made-

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them,

but excludes any such communications or items held with the intention of furthering a criminal purpose;

"material" (物料) includes any book, document or other record in any form whatsoever, and any article or substance;

"organized crime" (有組織罪行) means a Schedule 1 offence that-

(a) is connected with the activities of a particular triad society;

(b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or

(c) is committed by 2 or more persons, involves substantial planning and organization and involves-

(i) loss of the life of any person, or a substantial risk of such a loss;

(ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or

(iii) serious loss of liberty of any person;

"premises" (處所) includes any place and, in particular, includes-

(a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and

(b) any tent or movable structure;

"property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

"Registrar" (司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s. 2)

"reward" (酬賞) includes a pecuniary advantage;

"Schedule 1 offence" (附表 1 所列罪行) means-

(a) any of the offences specified in Schedule 1;

(b) conspiracy to commit any of those offences;

(c) inciting another to commit any of those offences;

(d) attempting to commit any of those offences;

(e) aiding, abetting, counselling or procuring the commission of any of those offences;

"society" (社團) has the same meaning as in section 2(1) of the Societies Ordinance (Cap 151);

"specified offence" (指明的罪行) means-

(a) any of the offences specified in Schedule 1 or Schedule 2;

(b) conspiracy to commit any of those offences;

(c) inciting another to commit any of those offences;

(d) attempting to commit any of those offences;

(e) aiding, abetting, counselling or procuring the commission of any of those offences.

"triad society" (三合會) includes any society which-

(a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or

(b) adopts or makes use of any triad title or nomenclature;

(2) For the purpose of the definition of "organized crime" (有組織罪行) in subsection (1)-

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Section of Enactment

Chapter :	455	Title :	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number :	L.N. 362 of 1997; 25 of 1998
Section :	3	Heading :	Requirement to furnish information or produce material	Version Date :	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

PART II

POWERS OF INVESTIGATION

(1) The Secretary for Justice may, for the purpose of an investigation into an organized crime, make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to a particular person or to persons of a particular description. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)

(2) The Court of First Instance may, if on such an application it is satisfied that the conditions in subsection (4)(a), (b) and (d) or subsection (4)(a), (c) and (d) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates. (Amended 25 of 1998 s. 2)

(3) An order under subsection (2) shall-

(a) give particulars of the organized crime under investigation;

(b) identify the particular person, or state the particular description of persons, in respect of whom the order is made;

(c) authorize the Secretary for Justice to require the person or persons in respect of whom the order is made-

(i) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation; or

(ii) to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him so to relate,

or both; and (Amended L.N. 362 of 1997)

(d) contain such other terms (if any) as the Court of First Instance considers appropriate in the public interest, but nothing in this paragraph shall be construed as authorizing the court to order the detention of any person in custody without that person's consent. (Amended 25 of 1998 s. 2)

(4) The conditions referred to in subsection (2) are-

(a) that there are reasonable grounds for suspecting that the organized crime under investigation has been committed;

(b) where the application relates to a particular person, that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;

(c) where the application relates to persons of a particular description, that-

(i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and

(ii) the organized crime could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation

confidential or the difficulty in identifying a particular person who has relevant information or material;

(d) that there are reasonable grounds for believing that it is in the public interest, having regard-

(i) to the seriousness of the organized crime under investigation;

(ii) to whether or not the organized crime could be effectively investigated if an order under subsection (2) is not made;

(iii) to the benefit likely to accrue to the investigation if the information is disclosed or the material obtained;

and

(iv) to the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates),

that an order under subsection (2) should be made in respect of that person or those persons.

(5) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to an investigation, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation. (Amended L.N. 362 of 1997)

(6) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him so to relate or any material of a specified class that reasonably appears to him so to relate. (Amended L.N. 362 of 1997)

(7) A notice in writing imposing a requirement on a person under subsection (5) or (6) shall-

(a) state that a court order has been made under this section and include-

(i) the date of the order;

(ii) the particulars of the organized crime under investigation;

(iii) where the order is made in respect of that particular person, a statement to that effect;

(iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;

(v) a statement of the authorization given to the Secretary for Justice by the order; and (Amended L.N. 362 of 1997)

(vi) a statement of any other terms of the order relevant to that person;

(b) have annexed to it a copy of the order made under this section, but there may be excluded from such copy-

(i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and

(ii) any details in the order that relate only to such particular person or persons of a particular description; and

(c) be substantially in the form specified in Schedule 4 in relation to such notice and in addition shall set out or have annexed to it subsections (8) to (10) and section 7.

(8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.

(9) A person shall not under this section be required to furnish any information or produce any material relating to items subject to legal privilege, except that a lawyer may be required to furnish the name and address of his client.

(10) An order under subsection (2), and a notice in writing imposing a requirement under subsection (5) or (6), may be made in relation to information held by, and material in the possession of, a public body as defined in section 28.

(11) A person is not excused from furnishing information or producing any material required under this section on the ground that to do so-

(a) might tend to incriminate him; or

(b) would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise.

(12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except as follows-

(a) in evidence in proceedings under subsection (14) or section 36 of the Crimes Ordinance (Cap 200); or

(b) for the purpose of impeaching his credibility in proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with it.

(13) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

(14) Any person who, in purported compliance with a requirement under this section-

(a) makes a statement that he knows to be false or misleading in a material particular; or

(b) recklessly makes a statement that is false or misleading in a material particular,

commits an offence and is liable-

(i) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(15) Where an order under subsection (2) has been made the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(b), no person is entitled to obtain a copy of the order or any part of the order. (Amended L.N. 362 of 1997)

(16) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form-

(a) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away;

(b) an authorized officer may by notice in writing served on the person require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.

(17) An application for the discharge or variation of an order made under this section may be made by any person on whom a requirement is imposed under the order.

(18) Rules of court-

(a) shall provide for applications by any person on whom a requirement is imposed under an order made under this section for the discharge or variation of such order;

(b) may provide for-

(i) proceedings relating to orders under this section;

(ii) conditions that must be satisfied before a person (including the Secretary for Justice) referred to in subsection (15) may obtain a copy of such order. (Amended 90 of 1995 s. 3; L.N. 362 of 1997)

(19) The Secretary for Security shall prepare a code of practice in connection with-

(a) the exercise of any of the powers conferred; and

(b) the discharge of any of the duties imposed,

by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council.

(Enacted 1994)

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Section of Enactment

Chapter :	455	Title :	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number :	L.N. 362 of 1997; 25 of 1998 s. 2
Section :	4	Heading :	Order to make material available	Version Date :	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) The Secretary for Justice or an authorized officer may, for the purpose of an investigation into-
- (a) an organized crime; or
 - (b) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime; or
 - (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,
- make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to particular material or material of a particular description, whether in Hong Kong or, in the case of an application by the Secretary for Justice, elsewhere. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)
- (2) Subject to subsection (5) and section 28(10), the court may, if on such an application it is satisfied that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled, make an order that the person who appears to the court to be in possession or control of the material to which the application relates shall-
- (a) produce the material to an authorized officer for him to take away; or
 - (b) give an authorized officer access to it,
- within such period as the order may specify.
- (3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) are-
- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
 - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person-
 - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
 - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
 - (c) that there are reasonable grounds for believing that the material to which the application relates-
 - (i) is likely to be relevant to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege;
 - (d) that there are reasonable grounds for believing that it is in the public interest, having regard-
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession or control of the material holds or controls it, as the case may be, (Amended 90 of 1995 s. 4)
- that the material should be produced or that access to it should be given.

(5) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not reasonably practicable.

(6) Where a court makes an order under subsection (2)(b) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.

(7) An application for the discharge or variation of an order made under subsection (2) or (6) may be made by any person who is subject to the order.

(8) Rules of court-

(a) shall provide for applications by any person who is subject to an order made under this section for the discharge or variation of such order;

(b) may provide for proceedings relating to orders under this section.

(9) Where material to which an application under this section relates consists of information recorded otherwise than in legible form-

(a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away; and

(b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) Where an order made under subsection (2)(a) relates to information recorded otherwise than in legible form, an authorized officer may by notice in writing require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded.

(11) An order under subsection (2)-

(a) shall not confer any right to production of, or access to, items subject to legal privilege; and

(b) may be made in relation to material in the possession or control of a public body as defined in section 28.

(Amended 90 of 1995 s. 4)

(12) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so-

(a) might tend to incriminate him; or

(b) would breach an obligation as to secrecy or another restriction upon the disclosure of information imposed by statute or otherwise.

(13) Any person who without reasonable excuse fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

(14) An authorized officer may photograph or make copies of any material produced under this section.

(Enacted 1994)

[cf. 1986 c. 32 s. 27 U.K.]

- (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
- (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
- (c) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;
- (d) that-
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.
- (5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be relevant to the investigation for the purpose of which the warrant was issued.
- (6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable-
 - (a) on conviction upon indictment to a fine of \$250000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (7) An authorized officer may photograph or make copies of any material seized under this section.
- (8) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. (Added 88 of 1995 s. 6)

(Enacted 1994)

[cf. 1986 c. 32 s. 28 U.K.]

United Nations (Anti-Terrorism Measures) Bill

Resolution made,
 or a United
 Nations
 Convention which
 has entered into
 force, after 15
 October 1999; and
 (iii) the function of
 which, in whole or
 in part, is to
 designate persons
 or property as
 terrorists,
 terrorist
 associates or
 terrorist
 property, as the
 case may be;

"legal practitioner" () includes
a firm in which the legal practitioner
is a partner or is held out to be a
partner:

"perform" (), in relation to a
 function, includes exercise;

"prescribed interest" (), in
 relation to any property, means an
 interest in the property prescribed by

rules made under section 17 as an interest for the purposes of this Ordinance;".

(b) By adding -

"(4) For the purposes of this Ordinance, a person who has a prescribed interest in any property shall be deemed to be a person by, for or on behalf of whom the property is or was held.

~~(5) It is hereby declared that nothing in this Ordinance shall operate to restrict the law applicable to -~~

~~(a) legal professional privilege;~~

~~or~~

~~(b) privilege against~~

~~incrimination of self."~~

(5) Nothing in this Ordinance shall -

(a) require a legal practitioner to disclose any privileged communication; or

(b) restrict the privilege against self-incrimination.

(6) Subject to subsection (7), for the purposes of subsection (5) (a), a communication is privileged communication if -

(a) it is a confidential

communication, whether oral or written, passing between -

(i) a legal practitioner
in the
practitioner's
professional
capacity and another
in that capacity; or

(ii) a legal practitioner
in the
practitioner's
professional
capacity and the
practitioner's
client. "

whether made directly or
indirectly through an agent of
either;

(b) it is made or brought into
existence for the purpose of
obtaining or giving legal advice
or assistance; and

(c) it is not made or brought into
existence for the purpose of
committing or furthering the
commission of some illegal or
wrongful act.

(7) Where information consists wholly or
partly of, or relates wholly or partly to, the

receipts, payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, the practitioner's client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the practitioner in connection with a trust account of the practitioner.

(6) For the avoidance of doubt, it is hereby declared that section 14 of the High Court Ordinance (Cap. 4) shall apply to any judgment or order of the Court of First Instance arising from proceedings -

- (a) under section 4A in the case of an application under section 4A(1) made inter partes; or
- (b) under section 13, 16 or 16A."

4

By deleting the clause and substituting -

"4. Specification by Chief Executive of persons and property as terrorists, terrorist associates or terrorist property

(1) Where a person is designated by the Committee as a terrorist, the Chief Executive may publish a notice in the Gazette specifying the name

0000518

New Zealand <Bombing and Financing> <Suppression> Bill

Terrorism <(Bombings and Financing)>
<Suppression>

Part 2 of 177

New (majority)

between that Commissioner and the financial institution or person concerned.

- (2) However, if the urgency of the situation requires, a report under **section 17A** may be made orally to any member of the police authorised for the purpose by the Commissioner of Police, but in any case of that kind the financial institution or other person must, as soon as practicable, forward to that Commissioner a report that complies with the requirements of **subsection (1)**.
- (3) The Commissioner of Police may confer the authority to receive a report under **subsection (2)** on any specified member of the police or on members of the police of any specified rank or class, or on any member or members of the police for the time being holding any specified office or specified class of offices.
- (4) If a report under **section 17A** is made by or on behalf of a financial institution in respect of property that came into the possession or control of the financial institution through a transaction conducted or proposed to be conducted through the financial institution, the financial institution need not make a suspicious transaction report in respect of the transaction or proposed transaction unless asked to do so by or on behalf of the Commissioner of Police.
- (5) In this section, **section 17V**, and **Schedule 3B**, facility, financial institution, suspicious transaction report, and transaction have the meanings given to them in section 2(1) of the Financial Transactions Reporting Act 1996.

Compare: 1996 No 9 s 15(2) (4)

177 Privileged communication defined

- (1) For the purposes of **section 17A(3)**, a communication is a privileged communication only if—
- (a) it is a confidential communication, whether oral or written, passing between—
- (i) a lawyer in his or her professional capacity and another lawyer in that capacity; or

New (majority)

- (ii) a lawyer in his or her professional capacity and his or her client,—
whether made directly or indirectly through an agent of either: and
- (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.
- (2) However, where the information consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer within the meaning of section 2 of the Law Practitioners Act 1982.
- (3) For the purposes of this section, references to a lawyer include a firm in which he or she is a partner or is held out to be a partner.

Compare: 1996 No 9 s 19

17U Protection of persons

- (1) A person has immunity from civil, criminal, or disciplinary proceedings under **subsection (2)** if the person—
- (a) acts in purported compliance with the requirements of **section 10A or section 10B** or both; or
- (b) reports a suspicion to the Commissioner of Police under **section 17R**; or
- (c) otherwise discloses information to the Commissioner of Police in connection with a report of that kind.
- (2) No civil, criminal, or disciplinary proceedings lie against a person to whom **subsection (1)** applies—
- (a) in respect of the acts of the person in good faith and with reasonable care in purported compliance with the requirements of **section 10A or section 10B** or both; or