

## **Constitutional Affairs Committee's comments on the United Nations (Anti-Terrorist) Bill**

The Law Society refers to its earlier comments dated 30 April 2002 and has additional observations on the Bill: -

### **Section 16 Applications to the Court of First Instance**

In order to protect an innocent party, whose name has been wrongly gazetted, the Committee considers it appropriate for the Government to provide compensation.

The Court hearing should be :-

1. Expedited; and
2. The Judge should have a statutory discretion to award compensation on the setting aside of the Section 4 Notice in the Gazette.

Members were of the opinion that although an innocent party has common law remedies to seek compensation, the anti-terrorism measure of gazetting a person's name as a terrorist imposes significant hardships on innocent parties. In the ordinary course of events, an innocent party would have to launch separate civil proceedings in order to receive compensation. It could take a significant amount of time and money before the hearing for assessment of damages. In addition, an innocent party may well be out of pocket in pursuing the civil remedy as the standard award of cost in civil proceedings is on a "party and party basis" which usually results in a 60% recovery of actual costs incurred.

The Law Society therefore considers that a "right to compensation" should be included in the Bill. This will enable the Judge hearing the Section 16 application to consider whether immediate relief can be awarded to an innocent party.

**The Law Society of Hong Kong  
Constitutional Affairs Committee  
29 May 2002**