

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

Introduction

This note sets out the Administration's response to outstanding issues raised by the Bills Committee, and the Committee Stage Amendments (CSAs) to be moved by the Secretary for Security in order to address concerns raised by relevant parties. A draft set of CSAs is enclosed at **Annex** for Members' reference. As the Administration is consulting the Judiciary on a number of the proposed amendments, it should be noted that the CSAs may be subject to further adjustments as necessary.

Definition of "terrorist act"

2. The definition of "terrorist act" under Clause 2 will be amended. The exclusion provided in paragraph (b) of the definition of "terrorist act" will be extended to cover both paragraphs (a)(i)(E) and (F).

Definition of "prescribed interest"

3. A new definition of "prescribed interest" will be added. It is a technical amendment.

Legal privilege and the right against self-incrimination

4. We note the concerns of Members and also the requirements under Article 35 of the Basic Law. Notwithstanding that the Bill has not in substance altered the common law position governing legal privileges, the proposed CSAs amend Clause 2 by adding a new paragraph (5) declaring that, for the avoidance of doubt, nothing in the Bill shall operate to restrict the law applicable to legal professional privilege or privilege against self incrimination.

Specification of terrorist, terrorist associate and terrorist property by the Chief Executive under Clause 4

5. Clause 4 of the Bill will be replaced by Clauses 4 and 4A in the proposed CSAs. The new Clause 4 will enable the Chief Executive to publish a notice in the Gazette specifying the name of a person or the property if such person or property is designated by a United Nations Security Council Committee as a terrorist, terrorist associate or terrorist property. Where the person or property ceased to be designated by the United Nations Security Council Committee, the Chief Executive shall revoke the notice through publication in the Gazette. Clause 4A provides for the Secretary for Justice to

make an application, on behalf of the Chief Executive, to the Court of First Instance for an order to specify a person or property as a terrorist, a terrorist associate or terrorist property. The Court of First Instance shall only make the order if it has reasonable grounds to believe so. The Chief Executive shall arrange the court order to be published in the Gazette. If the Chief Executive receives information which causes him to have reasonable grounds to believe that the person or property is not, or is no longer, a terrorist, a terrorist associate or terrorist property, then the Secretary for Justice may, on behalf of the Chief Executive, make an application to the Court of First of Instance for the order to be revoked.

6. It should be noted that Clause 17(1) of the Bill, as amended by the proposed CSAs, provides for the making of rules of court regarding the procedures for the hearing of the application by the Secretary for Justice. The Rules Committee of the Judiciary will decide whether specific rules or procedures for such application should be made, for example to cater for applications made in camera or ex parte. Such rules of court are subsidiary legislation subject to the scrutiny of the Legislative Council.

Chief Executive's specifications under Clause 4 and notices issued by the Secretary for Security under Clause 5

7. We note members' concern on the three-year expiry period for the Chief Executive's specification under Clause 4 and the Secretary for Security's freezing directions under Clause 5. We propose to amend the relevant provisions to reduce the expiry for both the specifications and notices to two years.

Effect of Clause 9(1)(b)

8. Clause 9(1)(b) will be amended by deleting the words "or begin to serve in any capacity with" to avoid confusion.

Prohibition against false threats of terrorist acts

9. The Administration considers it necessary to prevent and deter hoaxes which are intended to cause panic and confusion. Clause 10 will not suppress freedom of the press. In order to prove an offence under Clause 10(1), the false report must be made with the intent to cause others to wrongly believe that a terrorist act has been, is being or will be carried out. These two elements of the offence will have to be proved beyond reasonable doubt by the prosecution.

Clause 11 Disclosure of knowledge or suspicion that property is terrorist property

10. Clause 11 will be amended to require a person to make a report if he knows or suspects that property is terrorist property. A new paragraph 3A will be added to protect staff who made disclosure to their compliance officers from liability under Clause 11. A parallel provision is contained in Section 25A(4) of the Drug Trafficking (Recovery of Proceeds) Ordinance.

Applications to Court of Appeal

11. Clause 16 will be amended to provide for the right to apply to the Court of Appeal in order to challenge decisions made by the Court of First Instance under Clause 4A(2) in the CSAs and notices given by the Secretary for Security to freeze funds under Clause 5(1) of the Bill. It also requires the applicant to give a copy of the application and other relevant supporting documents, if any, to the Secretary for Justice. We are consulting the Judiciary on the CSAs. Notwithstanding, we consider it reasonable to have both types of appeal applications dealt with by the Court of Appeal.

Compensation

12. The new Clause 16A in the CSAs provides that where persons or property ceased to be specified under Clause 4A(2) or 5(1), the Court of Appeal can order the Government to pay compensation in some circumstances.

Authorization of officers and delegation of powers

13. Clauses 2 and 15 will be amended to provide that “authorized officers” will only include “public officers”.

Amendments to Schedules 1, 2 or 3

14. Clause 18 will be deleted under the CSAs. Further adjustments to the schedules will require amendments to the principal ordinance instead of subsidiary legislation.

Obtaining of evidence and information under Schedule 2

15. We propose to amend Section 1 of Schedule 2 which will enable an authorized officer to apply to a magistrate or court for an order compelling a person to furnish information for the purpose of securing compliance with or detecting evasion of the Bill.

UNITED NATIONS (ANTI-TERRORISM MEASURES) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

- 2 (a) In subclause (1) -
- (i) in the definition of "authorized officer",
by deleting "person" and substituting
"public officer";
 - (ii) in the definition of "terrorist act", in
paragraph (b), by deleting "(a) (i) (F)" and
substituting "(a) (i) (E) or (F)";
 - (iii) by deleting the definition of "terrorist
associate" and substituting -
"terrorist associate" () means
an entity owned or controlled,
directly or indirectly, by a
terrorist;"
 - (iv) by adding -

“Committee” () means -

(a) the Committee of the United Nations Security Council established pursuant to the United Nations Security Council Resolution 1267 of 15 October 1999; or

(b) any other committee -

(i) of the United Nations;

(ii) established pursuant to a United Nations Security Council 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;

"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."

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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 or names of the person.

(2) Where a person is designated by the Committee as a terrorist associate, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person.

(3) Where any property is designated by the Committee as terrorist property, the Chief Executive may publish a notice in the Gazette specifying the property.

(4) For the avoidance of doubt, it is hereby declared that a notice under subsection (1), (2) or (3) is not subsidiary legislation.

(5) For the purposes of this Ordinance, it

shall be presumed, in the absence of evidence to the contrary, that -

- (a) a person specified in a notice under subsection (1) is a terrorist;
- (b) a person specified in a notice under subsection (2) is a terrorist associate;
- (c) property specified in a notice under subsection (3) is terrorist property.

(6) Where -

- (a) a person or property is specified in a notice under subsection (1), (2) or (3), as the case may be; and
- (b) the person or property ceases to be designated by the Committee as a terrorist, terrorist associate or terrorist property, as the case may be,

then the Chief Executive shall, as soon as is practicable, by notice published in the Gazette, revoke the notice to the extent that it relates to the person or property, as the case may be.

(7) For the avoidance of doubt, it is hereby declared that subsection (6) shall not operate to prevent the Chief Executive from again exercising

the Chief Executive's power under subsection (1), (2) or (3) in respect of a person or property who or which has ceased to be specified in a notice under subsection (1), (2) or (3) by virtue of the operation of subsection (6).

4A. Specification by Court of First Instance of persons and property as terrorists, terrorist associates or terrorist property

(1) The Secretary for Justice may, on behalf of the Chief Executive, make an application to the Court of First Instance for an order to specify -

- (a) the person the subject of the application as a terrorist or terrorist associate; or
- (b) the property the subject of the application as terrorist property.

(2) Where an application is made under subsection (1), the Court of First Instance shall only make the order sought by the application if it believes on reasonable grounds that the person or property the subject of the application is a terrorist, terrorist associate or terrorist property, as the case may be.

(3) The Chief Executive shall cause an order under subsection (2) to be published in the

Gazette.

(4) Where an order under subsection (2) is published in the Gazette, then, subject to subsection (6) (a) and section 16(3) (a), for the purposes of this Ordinance, it shall be presumed, in the absence of evidence to the contrary, that -

- (a) a person specified in the order as a terrorist is a terrorist;
- (b) a person specified in the order as a terrorist associate is a terrorist associate;
- (c) property specified in the order as terrorist property is terrorist property.

(5) Where -

- (a) a person or property is specified in an order under subsection (2) published in the Gazette; and
- (b) the Chief Executive receives information which causes him to have reasonable grounds to believe that the person or property is not, or is no longer, a terrorist, terrorist associate or terrorist property, as the case may be,

then the Secretary for Justice may, on behalf of the Chief Executive, make an application to the

Court of First Instance for the order to be revoked to the extent that it relates to the person or property, as the case may be.

(6) On an application under subsection (5) -

(a) the presumption mentioned in subsection (4) shall not be applicable to the proceedings; and

(b) the Court of First Instance shall grant the application unless it is satisfied that there are reasonable grounds to believe that the person or property specified in the order concerned under subsection (2) is a terrorist, terrorist associate or terrorist property, as the case may be.

(7) Where -

(a) a person or property is specified in an order under subsection (2) published in the Gazette; and

(b) either -

(i) the Court of First Instance has granted an application under subsection (6) which relates to the person or property, as the case

may be; or

- (ii) the Court of Appeal has granted an application under section 16(3)(b) which relates to the person or property, as the case may be,

then the Chief Executive shall, as soon as is practicable, cause a notice to be published in the Gazette specifying that the order has been revoked to the extent that it relates to the person or property, as the case may be.

(8) An order under subsection (2) published in the Gazette which has not been revoked in its entirety by virtue of the granting of an application under subsection (6) or section 16(3)(b) shall expire on the 2nd anniversary of the date of its publication in the Gazette.

(9) For the avoidance of doubt, it is hereby declared that -

- (a) an order may be made under subsection (2) in respect of any person or property which has ceased to be designated by the Committee as a terrorist, terrorist associate or terrorist property, as the case may be;

(b) neither the granting of an application under subsection (6) or section 16(3)(a), nor subsection (8), shall operate to prevent the Court of First Instance from again exercising its power under subsection (2) in respect of a person or property who or which has ceased to be specified in an order under subsection (2) by virtue of the granting of that application, or the operation of subsection (8), as the case may be." .

5(3) By deleting "3rd" and substituting "2nd".

9 (a) In the heading, by adding "or orders under section 4A(2)" after "4(1) and (2)".

(b) In subclause (1) -

- (i) in paragraph (a), by deleting ", or to serve in any capacity with";
- (ii) in paragraph (b), by deleting "or begin to serve in any capacity with,";
- (iii) by adding "or a person specified in an order under section 4A(2) published in the Gazette" after "4(1) or (2)".

(c) By deleting subclause (2) and substituting -

"(2) Where a person is a member of -

(a) a person specified in a notice under section 4(1) or (2) published in the Gazette; or

(b) a person specified in an order under section 4A(2) published in the Gazette,

immediately before the date of publication in the Gazette, then the first-mentioned person shall take all practicable steps to cease to be such a member."

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(a) In subclause (1), by deleting "has reasonable grounds to suspect" and substituting "suspects".

(b) By adding -

"(3A) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer."

(c) In subclause (4), by deleting "has reasonable grounds to suspect that a disclosure has been made

under subsection (1)" and substituting "suspects that a disclosure has been made under subsection (1) or (3A)".

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- (a) In subclause (1), by deleting "person" and substituting "public officer".
 - (b) In subclauses (2) and (3), by deleting "person, or class or description of persons" and substituting "public officer, or class or description of public officers".

16 By deleting the clause and substituting -

**"16. Applications to Court
of Appeal**

(1) Where -

(a) an order under section 4A(2) has been published in the Gazette,
then -

(i) any person specified in the order, or any person acting for or on behalf of the person so specified, may at any time make an application to the Court of Appeal for the order to be revoked to

the extent that it relates to the person so specified;

- (ii) any person by, for or on behalf of whom any property specified in the order is held may at any time make an application to the Court of Appeal for the order to be revoked to the extent that it relates to the property so specified;

- (b) a notice has been given under section 5(1), then any person by, for or on behalf of whom any funds specified in the notice are held may at any time make an application to the Court of Appeal for the notice to be revoked to the extent that it relates to the funds so specified.

(2) A person who makes an application under subsection (1) shall give a copy of the application (and an affidavit, if any, and other relevant documents, if any, in support) -

- (a) to the Secretary for Justice and, in the case of an application under subsection (1) (a) (ii) or (b), to any other person by, for or on behalf of whom the property or funds concerned is or are held; and
 - (b) not later than 7 days before the date fixed for the hearing of the application.
- (3) On an application under subsection (1) -
- (a) in the case of an application under subsection (1) (a) (i) or (ii), the presumption mentioned in section 4A(4) shall not be applicable to the proceedings; and
 - (b) the Court of Appeal shall grant the application unless -
 - (i) where subsection (1) (a) (i) is applicable, the Court of Appeal is satisfied that there are reasonable grounds to believe that the person specified in the order concerned under section 4A(2) is a

terrorist or terrorist associate, as the case may be;

(ii) where subsection (1) (a) (ii) is applicable, the Court of Appeal is satisfied that there are reasonable grounds to believe that the property specified in the order concerned under section 4A(2) is terrorist property;

(iii) where subsection (1) (b) is applicable, the Court of Appeal is satisfied that there are reasonable grounds to suspect that the funds specified in the notice concerned under section 5(1) are terrorist property.

16A. Compensation

(1) Subject to subsection (2), where -

(a) a person has ceased to be specified as a terrorist or terrorist associate under section 4A(2); or

(b) property has ceased to be -

(i) specified as terrorist property under section 4A(2); or

(ii) specified in a notice under section 5(1),

then the Court of Appeal may, on application by -

(c) in the case of paragraph (a), the person who was so specified, or any person acting for or on behalf of the person who was so specified;

(d) where paragraph (b) is applicable, any person by, for or on behalf of whom the property that was so specified is held,

order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court of Appeal shall not order compensation to be paid under subsection (1) unless it is satisfied -

(a) where subsection (1)(a) is applicable, that at no time when

the person concerned was specified as a terrorist or terrorist associate under section 4A(2) was the person either a terrorist or terrorist associate;

- (b) where subsection (1)(b) is applicable, that at no time when the property was specified as terrorist property under section 4A(2), or was specified in a notice under section 5(1), as the case may be, was the property terrorist property;
- (c) that there has been some serious default on the part of any person concerned in obtaining the relevant specification under section 4A(2) or 5(1); and
- (d) the applicant has, in consequence of the relevant specification and the default mentioned in paragraph (c), suffered loss.

(3) Without prejudice to the operation of subsection (1), where -

- (a) any property is seized under the provisions of Schedule 3 on the ground that it is suspected to be

terrorist property; and

(b) subsequently, none of the following events occurs -

(i) the property is forfeited under section 13;

(ii) the institution of proceedings (whether in Hong Kong or elsewhere) -

(A) against any person in relation to an offence with which the property is connected; or

(B) which may result in the forfeiture or other confiscation of the property,

the Court of Appeal may, on application by any person by, for or on behalf of whom the property was held, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate

to make such an order.

(4) The Court of Appeal shall not order compensation to be paid under subsection (3) unless it is satisfied that -

(a) there has been some serious default on the part of any person concerned with the seizure or detention of the property concerned; and

(b) the applicant has, in consequence of such seizure or detention and the default mentioned in paragraph (a), suffered loss in relation to the property.

(5) The amount of compensation to be paid under this section shall be such as the Court of Appeal thinks just in all the circumstances of the case."

17(1) (a) By deleting paragraph (a) (i), (ii), (iii) and (iv) and substituting -

"(i) section 4A;

(ii) section 13;

(iii) section 16;

(iv) section 16A;

(v) regulations made under section 19;

(vi) Schedule 2 to a magistrate, court

or judge mentioned in that
Schedule; or

(vii) Schedule 3 to a court within the
meaning of that Schedule;".

(b) By deleting paragraph (b) (ii) and substituting -
“(ii) where paragraph (a) (i), (ii), (v)
or (vii) is applicable, made ex
parte;”.

(c) By deleting paragraph (e) (ii) and substituting -
“(ii) prescribing interests for the purposes
of the definition of “prescribed
interest”;”.

18 By deleting the clause.

19 By adding -

“(2A) Without limiting the generality of
subsection (1), regulations made under this
section may provide for compensation to be paid,
on grounds specified in the regulations, to a
person who has suffered loss in consequence of any
act done or omission made under the regulations
in respect of any property.”.

Schedule 2 (a) In section 1 -

(i) in subsection (1), by deleting
everything after “evasion” and

substituting "of this Ordinance.";

- (ii) by deleting subsections (2) and (3) and substituting -

"(3) Where a person refuses or fails to comply with a request under subsection (1) within such time and in such manner as is specified in the request, a magistrate or court may -

(a) on application made by an authorized officer; and

(b) if satisfied that the request is for the purpose of securing compliance with or detecting evasion of this Ordinance,

make an order requiring the person, within such time and in such manner as is specified in the order, to furnish the information, or produce to an authorized officer the material, to which the request

relates." .

(b) In section 3 -

- (i) in paragraph (a), by deleting "request made under this Schedule by any person who is empowered to make it" and substituting "order under section 1(3)";
- (ii) in paragraph (b), by deleting "exercising his powers" and substituting "performing his functions".