

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

Summary of Written Submissions

<u>Clause No.</u>	<u>Major views/concerns of deputations</u>	<u>Administration's response</u>
<p>2 Interpretation</p>	<p><u>The Law Society of Hong Kong</u> <u>Amnesty International</u></p> <ul style="list-style-type: none"> - Concerned over the potential abuse of the Bill in limiting peaceful exercise of the right to freedom of expression, in view of the broad definition of "terrorist act" 	<ul style="list-style-type: none"> - The definition of "terrorist act" 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)
	<p><u>The Law Society of Hong Kong</u></p> <ul style="list-style-type: none"> - To specify in the Bill that a person would have the right to claim damages from the Government in the event that he feels he has been aggrieved by a specification by CE 	<ul style="list-style-type: none"> - The Administration would move a Committee Stage amendment (CSA) to provide that where persons or property ceased to be specified under clause 4A(2), the Court of Appeal can order the Government to pay compensation in some circumstances
	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - It is necessary to consider whether compensation to persons wrongly specified as specified as terrorists, terrorist associates or whose property is specified as terrorist property should be extended to loss to reputation 	

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<p>2 Interpretation</p>	<p><u>Amnesty International</u></p> <ul style="list-style-type: none"> - Concerned that CE does not have to obtain a court order before publishing in the Gazette that a person or property is a terrorist, terrorist associate or terrorist property - The Bill does not seem to allow any means for the person being classified as terrorist, terrorist associate or whose property is being classified as terrorist property to appeal or halt the publication of the notice before it is actually published 	<ul style="list-style-type: none"> - Clause 4 will be replaced by clauses 4 and 4A in the proposed CSAs. The new clause 4 will enable CE to publish a notice in the Gazette specifying the name of a person or property if such person or property is designated by a United Nations Security Council Committee as a terrorist, terrorist associate or terrorist property. Clause 4A provides for the Secretary for Justice to make an application, on behalf of CE, to the Court of First Instance for an order to specify a person or property as a terrorist, terrorist associate or terrorist property. The Court of First Instance shall only make the order if it has reasonable grounds to believe so. CE shall then arrange the court order to be published in the Gazette
<p>5 Freezing of Funds</p>	<p><u>The Law Society of Hong Kong</u></p> <ul style="list-style-type: none"> - To specify in the Bill that a person would have the right to claim damages from the Government in the event that he feels he has been aggrieved by the notice made by the Secretary for Security (S for S) under clause 5 had been successful 	<ul style="list-style-type: none"> - The Administration would move a CSA to provide that where property ceased to be specified under clause 5(1), the Court of Appeal can order the Government to pay compensation in some circumstances

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<p>5 Freezing of Funds</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - Without a means to seek relief from an impartial arbiter, the proposed scheme for freezing terrorist funds risks violating Article 10 of the Hong Kong Bills of Rights and Article 35 of the Basic Law - Persons affected by the freezing of funds need to know if they can obtain a licence to access the funds specified in a notice by S for S for legitimate purposes, such as paying reasonable living and legal expenses - Funds acquired by innocent people should be exempted from the freezing scheme - The clause which qualifies the power to grant a licence, i.e. "for the purposes of this section", in clause 5(1) is unclear and should be deleted - Notice on freezing of funds should expire at six months or a year unless proceedings have been brought against under clause 13 to have the funds forfeited 	<ul style="list-style-type: none"> - The Administration would amend the relevant provision to reduce the expiry for the notice on freezing of funds to two years
<p>6-8 Prohibitions relating to terrorists, terrorist associates and terrorist property</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - To prevent carelessness on the part of lending agents or institutions in identifying a terrorist or terrorist associate specified by CE in the Gazette, it may be necessary to create a regulatory offence to ensure that persons in a position to lend or leverage funds take reasonable steps (at minimum) to check for the client's name on CE's notices 	

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<p>10 Prohibition against false threats of terrorist acts</p>	<p><u>The Law Society of Hong Kong</u></p> <ul style="list-style-type: none"> - Prohibition against false threat of terrorist act under clause 10 equates to prohibition against publication of false news likely to alarm public order which was repealed by the Administration in 1989 	<ul style="list-style-type: none"> - 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
<p>11 Disclosure of knowledge or suspicion that property is terrorist property</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - There should be an exemption from disclosure in situations where the legal adviser genuinely believes the disclosure will undermine the trust and confidentiality in the relationship that is essential to the effective representation of the client 	<ul style="list-style-type: none"> - Notwithstanding that the Bill has not in substance altered the common law position governing legal privileges, the Administration would move CSAs to 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
<p>12 Powers to obtain evidence and information</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - The word "reasonably" should be added before the word "suspected" of being terrorist property referred to in clause 12(2) 	

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<p>13 Forfeiture of terrorist property</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - Hearings on forfeiture of terrorist property held in camera and ex parte should not be made unless under extremely exceptional circumstances - Provision should be made for discretionary relief to innocent third parties holding terrorist property - The words "as it applies to and in relation to section 24D(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405)" should be deleted from clause 13(5) to avoid confusion - It is not clear whether there is any right of appeal against a forfeiture order. It is recommended that a clear right of appeal be provided in the Bill for aggrieved persons 	
<p>14 Offences</p>	<p><u>Amnesty International</u></p> <ul style="list-style-type: none"> - A person liable to offences under clause 14 should have access to the evidence against him and has the right to challenge that evidence - Any proceedings related to summary trials should contain internationally recognised provisions relating to fair trials - particularly to have adequate time and facilities to prepare a defence case and to call and examine witnesses - as any standard criminal trial would contain - Trials in camera should only be held when there are compelling reasons to do so, such as the safety of witnesses, protection of minors and national security interests 	

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<p>16 Applications to Court of First Instance</p>	<p><u>The Law Society of Hong Kong</u></p> <ul style="list-style-type: none"> - It would be unacceptable if the intent of clause 16(3)(b)(i) is to place the onus on the person seeking leave to prove his innocence 	<ul style="list-style-type: none"> - Clause 16(3)(b)(i) does not place the onus on the person seeking leave to prove his innocence
	<p><u>Amnesty International</u></p> <ul style="list-style-type: none"> - It would be very difficult for the Court of First Instance to grant an application for the notice to be revoked, as it is stipulated in clause 16 that the court shall grant the application unless it is satisfied that CE had and continues to have reasonable grounds to believe that the person or property specified in the notice is a terrorist, terrorist associate or terrorist property; or that S for S had and continues to have reasonable grounds to suspect that the funds specified in the notice are terrorist property 	
<p>19 Regulations - freezing of property (other than funds)</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - There should be greater clarification in the main body of the legislation as to the availability of judicial review - Safeguards providing for a reasonable expiry period, notice to affected persons, judicial review and supervision, release of property for legitimate purposes, re-freezing of property on after a material change in circumstances, should be included in either the main body of the legislation or in the regulations to be made by S for S - The Administration should re-consider the approach of using regulations to freeze property other than funds 	

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<p>Schedule 2 Evidence and information</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - An overriding provision should be added to the main body of the legislation clearly stating the powers in Schedules 2 and 3 be exercised by authorized officers without any discrimination based on race, colour, sex, language, religion, national or social origin, and birth - It is unclear as to what extent the powers in section 1 of Schedule 2 to compel the production of information and materials would abrogate the common law privilege against self-incrimination 	<ul style="list-style-type: none"> - Notwithstanding that the Bill has not in substance altered the common law position governing legal privileges, the Administration would move CSAs to 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
<p>Schedule 3 Seizure and detention of property suspected to be terrorist property</p>	<p><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <ul style="list-style-type: none"> - All search powers in section 2 of Schedule 3 be made subject (at minimum) to a standard of reasonable grounds to suspect evidence of an offence under the Bill or the presence of terrorist property - Qualified language should be added to section 2(5) of Schedule 3 to prevent unreasonable use of powers - Provision should be made to Schedule 3 to require authorized officers to obtain judicial authorisation before carrying out intrusive bodily searches - Provision should be made to section 3(4) of Schedule 3 to allow affected persons to apply for release of seized property for legitimate purposes 	

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Other issues	<p data-bbox="510 252 1236 284"><u>Mr Simon YOUNG of the University of Hong Kong</u></p> <p data-bbox="510 325 1191 357">- Whether the Bill has any retrospective application</p> <p data-bbox="510 399 1223 430"><u>Concerned People's Organizations and Citizen's Groups</u></p> <p data-bbox="510 472 1227 616">Concerned that the Bill will be used to suppress religious freedom and human rights in line with the Central People's Government policies. They demand the following from the Administration -</p> <ul data-bbox="555 657 1218 1206" style="list-style-type: none"><li data-bbox="555 657 860 689">(a) Withdraw the Bill;<li data-bbox="555 730 1187 874">(b) Withdraw its support of the US-led war on terrorism, and instead supports regional and international initiatives to build peace and social justice in the region;<li data-bbox="555 916 1218 1027">(c) Implement the recommendations of the United Nations Committee on Economic, Social and Cultural Rights; and<li data-bbox="555 1069 1209 1206">(d) End its ongoing attempts to suppress the right to dissent in the HKSAR, and its efforts to intimidate and harass advocacy and rights organisations into silence.	