

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

Introduction

Further to the meeting of the Bills Committee on 19 June 2002, this note sets out the Administration's proposed amendments to the United Nations (Anti-Terrorism Measures) Bill at the Committee Stage in order to address concerns raised by relevant parties. A draft set of the Committee Stage Amendments (CSA) is enclosed at **Annex**. To facilitate Members' consideration of the draft CSAs, we have underlined those provisions to which revisions were made after the meeting of the Bills Committee on 19 June, and explain in more detail the substantive amendments in the following paragraphs. As the Administration is consulting the Judiciary on a number of the proposed amendments, further adjustments to the CSAs may be necessary.

Definitions of "terrorist act", "Committee" and "weapons"

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 paragraphs (a)(i)(D), (E) and (F). In addition, we have amended the criteria further taking into account views by Members. The word "involves" in paragraphs (a)(i)(A) and (B) is now replaced by "cause", the word "designed" in paragraphs (a)(i)(E) and (F) is now replaced by "intended" and the phrase "influence the Government" in paragraph (a)(ii)(A) is replaced with "compel the Government".

3. A new definition of "Committee" will be added. The Committee for the purpose of Clause 4 is the Committee of the United Nations Security Council established pursuant to Security Council Resolution 1267, or any other committee established under the auspices of the United Nations for the purpose of specifying terrorists, terrorist associates or terrorist property. This will ensure continuity in cases where new authorities are set up in future under the United Nations which may be tasked to specify terrorists etc.

4. Paragraph (d) of the definition of "weapons" will be deleted. Instead, we will amend paragraph (a) of the definition to include "chemical,

biological, radiological or nuclear weapons and their precursors”.

Legal privilege and the right against self-incrimination

5. 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

6. Clause 4 of the Bill will be replaced by Clause 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 property if such person or property is designated by a United Nations Security Council Committee as a terrorist, terrorist associate or terrorist property. Taking into account Members’ concern, Clause 4(6) provides that, where a specified person or property ceases to be designated by the United Nations Security Council Committee, the notice is deemed to be revoked immediately upon the cessation of the designation by the UN Committee, and the Chief Executive is required to publish as soon as is practicable a notice in the Gazette stating the fact of such revocation.

7. 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. Under Clause 4A(2), the Court of First Instance shall only make the order if it is satisfied, on the balance of probabilities, that the person or property is a terrorist, terrorist associate or terrorist property, as the case may be. The Chief Executive shall arrange for 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.

8. Clause 4A(9)(a) makes it clear that all applications under Clause 4A(1) shall be made *inter partes*, except in circumstances to be prescribed by

rules of court made under Clause 17(1)(b)(ii). 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. Clause 4A(9)(b) also makes it clear that there is an avenue for further appeal to the Court of Appeal.

9. We note Members' concern on the length of the expiry period for the specifications made under Clause 4A(1), and Clause 4A(8) provides that such specifications, if not otherwise revoked, will expire after 2 years. As regards the concerns whether the Chief Executive could re-specify a person or property using the same grounds which had been revoked or expired, we note that such applications would invariably be thrown out of court, or would run the risk of contempt.

Notices issued by the Secretary for Security under clause 5

10. We will amend Clause 5(3) and (4) of the Bill to provide that the notice issued by the Secretary for Security will expire after two years. Clause 5(3B) further provides that, where a notice has otherwise expired, the Secretary for Security shall not again exercise the power under Clause 5(1) "unless there has been a material change in the grounds in respect of which the Secretary proposes to again exercise that power in respect of the funds". This provision is added to address concerns on the possibility of the abuse of process.

Effect of Clause 9(1)(b)

11. Clause 9(1)(b) will be amended by deleting the words "or begin to serve in any capacity with" to narrow the scope of this offence provision to deal with Members' concerns.

Prohibition against false threats of terrorist acts

12. 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. We have provided in a separate note examples of similar provisions in other jurisdictions.

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

13. 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 make 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 and the Organised and Serious Crimes Ordinance.

Clause 14(10)

14. Clause 14(10) will be deleted. The issue of criminality of directors and officers of corporate bodies will be dealt with in accordance with Section 101E of the Criminal Procedure Ordinance (Cap. 221).

15. Clause 16 will be amended to provide for the right to apply to the Court of First Instance in order to challenge decisions made 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. Clause 16(4) makes it clear that there is an avenue for further appeal to the Court of Appeal.

Compensation

16. 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.

Authorization of officers and delegation of powers

17. Clauses 2 and 15 will be amended to provide that “authorized officers” must be “public officers”.

Amendments to Schedules 1, 2 or 3

18. Clause 18 will be deleted. Further adjustments to the schedules after the enactment of the Bill will require amendments to the principal ordinance instead of subsidiary legislation.

Obtaining of evidence and information under Schedule 2

19. We will amend Schedule 2 to provide that a person who fails to supply the information will only commit an offence if this failure is an contravention of a Magistrate's order.

Security Bureau
22 June 2002

DRAFT (21.6.2002)

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) by deleting the definition of "property";

(iii) by deleting the definitions of "terrorist act"

and "terrorist associate" and substituting -

"terrorist act" () -

(a) subject to paragraph (b),

means the use or threat of

action where -

(i) the action

(including, in

the case of a

threat, the

action if carried

out) -

(A) causes

serious
violence
against a
person;

(B) causes
serious
damage to
property;

(C) endangers a
person's
life, other
than that of
the person
committing
the action;

(D) creates a
serious risk
to the
health or
safety of
the public
or a section
of the
public;

(E) is intended
seriously to
interfere

with or
seriously to
disrupt an
electronic
system; or

(F) is intended
seriously to
interfere
with or
seriously to
disrupt an
essential
service,
facility or
system,
whether
public or
private; and

(ii) the use or threat
is -

(A) intended to
compel the
Government
or to
intimidate
the public
or a section

of the
 public; and
 (B) made for the
 purpose of
 advancing a
 political,
 religious or
 ideological
 cause;

(b) in the case of paragraph
 (a) (i) (D), (E) or (F), does
 not include the use or threat
 of action in the course of any
 advocacy, protest, dissent
 or stoppage of work;

"terrorist associate" () means an
 entity owned or controlled, directly or
 indirectly, by a terrorist;"

(iv) by deleting the definition of "weapons" and
 substituting -

"weapons" () includes -

- (a) chemical, biological,
 radiological or nuclear
 weapons and their
 precursors;
- (b) any arms and related material
 (including ammunition,

military vehicles, military equipment and paramilitary equipment); and

- (c) any components of any arms and related material mentioned in paragraph (b);"

(v) 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."

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 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 -

- (c) immediately upon the occurrence of that ceaser, the notice shall be deemed to be revoked to the extent that it relates to the person or property, as the case may be; and
- (d) the Chief Executive shall, as soon as is practicable and for information purposes, publish a notice in the

Gazette stating that the first-mentioned notice has been revoked to the extent that it relates to the person or property, as the case may be (or words to the like effect).

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

(1) The Secretary for Justice ^D, 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 is satisfied 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 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 First Instance 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 application under subsection (1) shall be made inter partes except where the application falls within the circumstances specified in rules made under section 17(1)(b)(ii);
- (b) where an application under subsection (1) is made inter partes, section 14 of the High Court Ordinance (Cap. 4) shall apply to any judgment or order under subsection (2) arising from proceedings under this section."

5(3) and

By deleting the clause and substituting -

(4)

"(3) Subject to subsection (3A), a notice under subsection (1) which has not been revoked under subsection (2) shall expire on the 2nd anniversary of the date on which it was signed by the Secretary.

(3A) Where an application under section 13 has been made to the Court of First Instance -

- (a) in respect of funds specified in a notice under subsection (1); and
- (b) before the expiration of the notice under subsection (3),

then, subject to subsection (2), the notice shall not expire until the date, if any, on which -

- (c) proceedings relating to the application (including proceedings relating to any appeal) are no longer pending; and
- (d) the funds have not been forfeited in consequence of those proceedings.

(3B) Where a notice under subsection (1) has expired under subsection (3) or (3A), the Secretary shall not again exercise the power under subsection (1) in respect of the funds specified in the notice unless there has been a material change in the grounds in respect of which the Secretary proposes to again exercise that power in respect of the funds.

(4) For the avoidance of doubt, it is hereby declared that the revocation under subsection (2),

or the expiry under subsection (3) or (3A), of a notice under subsection (1) shall not affect the application of section 7 to the funds which were specified in the notice."

- 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."

- 11
- (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)".

14(10) By deleting the clause.

- 15
- (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 First Instance

(1) Where -

(a) an application under section 4A(1) has been made ex parte and in consequence thereof 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 First Instance 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 First Instance 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 First Instance 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, whether for

the purposes of the proceedings or otherwise, immediately upon the initiation of the proceedings and until the conclusion of the proceedings (including the conclusion of any appeal arising out of the proceedings); and

(b) the Court of First Instance shall grant the application unless -

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

(4) 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 under this section.

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 First Instance 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 First Instance 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 First Instance 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 First Instance 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 First

Instance 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".