

**The Administration's Response to Issues raised by the
Legislative Council Assistant Legal Advisor
in her Letter dated 12 June 2002**

Introduction

This note sets out the Administration's response to the issues raised by the Legislative Council Assistant Legal Advisor in her letter dated 12 June 2002. Our response follows the headings as set out in the aforementioned letter.

Long title

2. The existing legal framework in Hong Kong is already in compliance with many of the requirements of UNSCR 1373. However, a number of areas in the Resolution cannot be fully implemented without enacting new legislation. For example, there is no offence of terrorist financing or offence of providing or collecting funds to be used to carry out terrorist acts. In addition, it is noted that the present regimes under the Organised and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance only allow for funds to be restrained and subsequently confiscated where a person has been charged with a specified offence and there is reason to believe he has benefited from that offence. These regimes are conviction based and the confiscated funds must be derived from the offence. Terrorist financing will however calls for a different regime as the property to be frozen or confiscated may not be the proceeds of an offence. It may instead be legitimately sourced and intended either to finance a terrorist act, a terrorist or his organization. In addition, there may be no conviction to underpin the order.

Clause 2 : Interpretation (“funds”, “property”)

3. We have noted the concerns of the Bills Committee and propose to delete the definition of “property” under Clause 2 of the Bill. The meaning of this term will be construed in accordance with the definition in the Interpretation and General Clauses Ordinance (Cap. 1). On the term “funds”, Schedule 1 of the Bill provides a comprehensive but non-exhaustive definition of “funds”, which is intended to enable the Court to have flexibility when deciding what should be regarded as “funds”.

“Terrorist act”

4. The definition of “terrorist act” will be amended, taking into account the comments of the Bills Committee. A separate note will be submitted to explain the proposed Committee Stage Amendments (CSA), including the revised definition of terrorist act. We note that you have focussed issue on the distinction between “an action that is seriously designed” and the results of an action. Paragraphs (a)(i)(E) and (F) of the definition are not intended to catch an action which is not designed to seriously interfere with or to seriously disrupt an electronic system or an essential service etc. An action that seriously interferes with or disrupts an electronic system or an essential service etc. will only be caught if it is intended for such purposes. As regards attempted actions, there is already a provision governing attempts to commit an offence, under Section 159G of the Crimes Ordinance (Cap. 200). We note that section 83.01(1.1) of the Canadian Anti-Terrorism Act is included “for greater certainty”. In our view the definition of “terrorist act” in the Bill is clear and does not require inclusion of a similar provision.

“Terrorist associate”

5. Please refer to the revised definition of “terrorist associate” in the draft CSAs to be submitted under separate cover.

Clause 3 : Application of certain provisions outside HKSAR

Clause 14 : Offences

6. Clause 14(11) cannot apply to a body corporate.

Clause 4 : Specification of persons and property as terrorists, terrorist associates or terrorist property

7. Please refer to the proposed mechanism of specifying terrorists, terrorist associates and terrorist property in the draft CSAs to be submitted under separate cover.

Clause 5 : Freezing of Funds

8. A notice from the Secretary for Security will be given to the holder of the funds who will then be under a duty to inform the owner of the funds [see Clause 5(5)].

9. Please also refer to the amended Clause 5(3) in the draft CSAs where it provides, amongst other things, that the Secretary 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”.

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

10. Please refer to the amended Clause 11 in the draft CSAs to be submitted under separate cover.

Clause 14 : Offences

11. We note the comments of the Bills Committee and propose to delete Clause 14(10) of the Bill. The criminality of directors and officers etc. of body corporate will then be dealt with under Section 101E of the Criminal Procedure Ordinance (Cap. 221).

Clause 16 : Application to Court of First Instance

12. We note the suggestion on the Chinese version of Clause 16(1)(a) of the Bill. Please in the Chinese version of the draft CSAs submitted to the Bills Committee on 19 June 2002.

13. For applications under Clause 16(1) of the Bill, the burden of proof rests with the Administration.

Security Bureau
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