

DRAFT (3.7.2002)

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) by deleting the definition of "authorized officer";
 - (ii) in the definition of "funds", by deleting "Schedule 1" and substituting "the Schedule";
 - (iii) by deleting the definition of "property";
 - (iv) 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 industrial action;

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

(v) 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).";

(vi) 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;

"items subject to legal privilege" (
) has the same meaning
as in section 2(1) of the Organized and
Serious Crimes Ordinance (Cap. 455);
"prescribed interest" (
), in
relation to any property, means an
interest in the property prescribed by
rules of court 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) Nothing in this Ordinance shall -

(a) require the disclosure of any items subject to legal privilege;

(b) authorize the search or seizure of any items subject to legal privilege; or

(c) restrict the privilege against self-incrimination.

(6) Without prejudice to the powers of the Court of First Instance under the Rules of the High Court (Cap. 4 sub. leg.), the Court of First Instance may of its own motion or on application order that any person who may be affected by an application -

(a) under section 4A in the case of an application under section 4A(1) made inter partes; or

(b) under section 13, 16 or 16A, be joined as a party to the proceedings.

(7) For the avoidance of doubt, it is

hereby declared -

(a) 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 -

(i) under section 4A in the case of an application under section 4A(1) made inter partes; or

(ii) under section 13, 16 or 16A;

(b) the provisions of this Ordinance shall be subject to the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1)."

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 cesser, 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 Chief Executive may 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 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 Chief Executive shall, as soon as is practicable, 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) The Court of First Instance shall grant an application under subsection (5).

(7) Where -

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

(b) the Court of First Instance has granted an application -

(i) under subsection (6) which relates to the person or property, as the case may be; or

(ii) 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 an application under subsection (1) shall be made inter partes except where the application falls within the circumstances specified in rules of court made for the purposes of this section."

5 (a) In subclause (1), by deleting "for the purposes of this section".

(b) By deleting subclauses (3) and (4) and substituting -

"(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, or part thereof, 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 in relation to the funds, or part thereof, as the case may be, 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, or part thereof, as the case may be, have not been forfeited in consequence of those proceedings.

(3B) Where a notice under subsection (1) has been revoked under subsection (2) or 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.".

7 By deleting "for the purposes of this section".

9 By deleting the clause and substituting -

"9. Prohibition on recruitment, etc. to bodies of persons specified in notices under section 4(1) and (2) or orders under section 4A(2)

(1) A person shall not -

(a) recruit another person to become a member of; or

(b) become a member of,

a body of persons (including individuals), whether corporate or unincorporate, who the first-mentioned person knows or has reasonable grounds to believe is specified in a notice under section 4(1) or (2), or specified in an order under section 4A(2), published in the Gazette.

(2) Where a person is a member of -

(a) a body of persons (including

individuals), whether corporate or unincorporate, specified in a notice under section 4(1) or (2) published in the Gazette; or

- (b) a body of persons (including individuals), whether corporate or unincorporate, specified in an order under section 4A(2) published in the Gazette,

immediately before the date of its publication in the Gazette, then the first-mentioned person shall, as soon as is practicable after that date, 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)".

Part 5 In the heading, by deleting "EVIDENCE,".

12 By deleting the clause.

13 (a) In subclause (4), by deleting "on the balance of probabilities" and substituting "the standard of proof applicable to civil proceedings in a court of law".

(b) In subclause (5), by deleting "17(3)" and substituting "18(3)".

14 (a) In subclause (3), by adding ", without reasonable excuse," after "who".

(b) In subclause (7)(a) and (b), by adding "at the material time" before "he".

(c) By deleting subclauses (8), (9) and (10).

New By adding in Part 6 -

**"14A. Supplementary provisions
applicable to licences
mentioned in section 5(1)
or 7**

(1) Without prejudice to the generality of conditions and exceptions which may be specified in

a licence mentioned in section 5(1) -

- (a) such conditions may relate to specifying the manner in which the funds to which the licence relates shall be held from time to time; and
- (b) such exceptions may relate to the reasonable living expenses and reasonable legal expenses of any person by, for or on behalf of whom the funds are held.

(2) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 7, such exceptions may relate to the reasonable living expenses and reasonable legal expenses of the person second-mentioned in that section to which the licence relates."

- 15 (a) By deleting the heading and substituting **"Delegations"**.
- (b) By deleting subclause (1).
- (c) 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, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the order, 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, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the notice, 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 or such shorter period as the Court of First Instance may permit pursuant to rules of court.
- (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) An application for -

(a) the grant of a licence mentioned in section 5(1) or 7 may be made by any person affected by the operation of that section; or

(b) the variation of a licence mentioned in section 5(1) or 7 may be made by any person affected by the licence.

(5) A person who makes an application under subsection (4) shall give a copy of the application (and affidavit, if any, and other relevant documents, if any, in support) -

(a) to the Secretary for Justice and to any other person affected by the operation concerned of section 5(1) or 7, or the licence concerned, as the case may be; and

(b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court of First Instance may permit pursuant to rules of court.

(6) The Court of First Instance shall not grant an application under subsection (4) unless it is satisfied that it is reasonable in all the circumstances of the case to do so.

(7) Where -

(a) proceedings relating to an application under subsection (4) (including proceedings relating to any appeal) are no longer pending; and

(b) the licence to which the application relates -

(i) is, or is still, required

to be granted; or

- (ii) is, or is still, required to be varied,

as the case may be,

then the Secretary shall, as soon as is practicable, cause the licence to be granted or varied, as the case may be, accordingly.

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) 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, 18 By deleting the clauses and substituting -

and 19 **"17. Regulations**

(1) The Secretary may make regulations for the purposes of enabling persons to be prohibited from dealing with any property (other than funds) -

- (a) that the Secretary has reasonable grounds to suspect is terrorist property; and
- (b) except under the authority of a licence granted by the Secretary for the purposes of the regulations.

(2) The Secretary may make regulations for the purposes of -

- (a) facilitating the obtaining of evidence and information for the purpose of securing compliance with or detecting evasion of this

Ordinance;

(b) facilitating the obtaining of evidence in relation to the commission of an offence under this Ordinance; and

(c) enabling property suspected of being terrorist property to be seized and detained while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of proceedings -

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

(ii) which may result in the property being specified in a notice under section 5(1) or which may result in the forfeiture or other confiscation of the property.

(3) The Secretary may make regulations for the purposes of authorizing public officers to perform functions or exercise powers under regulations made under this section.

(4) The Secretary may make regulations for the purposes of providing 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 regulations made under this section in respect of any property.

(5) Regulations made under this section may provide for applications to be made to, and orders to be made by, a magistrate or court for any purposes mentioned in subsection (1), (2) or (4).

(6) Regulations made under this section may -

(a) prescribe offences in respect of contraventions of the regulations (including contravention of any orders made under the regulations); and

(b) provide for the imposition in respect of any such offence of -

(i) on conviction on indictment, a fine and imprisonment for not more than 7 years;

(ii) on summary conviction, a fine at not more than level 6 and imprisonment for not more than 1 year.

(7) Regulations made under this section shall

be subject to the approval of the Legislative Council.

18. Procedure

(1) Provision may be made by rules of court -

(a) with respect to applications under -

(i) section 4A;

(ii) section 13;

(iii) section 16;

(iv) section 16A; or

(v) regulations made under
section 17;

(b) without limiting the generality of paragraph (a), with respect to the circumstances in which applications mentioned in that paragraph shall be made ex parte;

(c) without limiting the generality of paragraph (a), with respect to expediting, on grounds specified in the rules, the hearing of applications mentioned in that paragraph;

(d) with respect to the division, conversion or disposal of property for the purposes of satisfying an order under section 13(1) to which the property is subject where -

(i) section 13(2) is
applicable; and

(ii) the property is not readily
divisible for those
purposes;

(e) without limiting the generality of
paragraph (a), prescribing interests
for the purposes of the definition of
"prescribed interest";

(f) generally with respect to the
procedure under this Ordinance before
any court.

(2) Subsection (1) is without prejudice to the
generality of any existing power to make rules.

(3) Rules made under this section may -

(a) state that they supersede, in whole
or in part, any rules that apply to
procedure under this Ordinance by
virtue of section 13(5);

(b) for the purposes of reflecting a
supersession mentioned in paragraph
(a), amend section 13(5).

**19. Proceedings inter partes
shall be held in open
court unless otherwise
ordered by the court**

(1) Subject to subsection (2), proceedings

inter partes in respect of applications mentioned in section 18(1)(a) shall be held in open court unless the court otherwise orders, upon application made by any party to the proceedings, that all or part of the proceedings shall be held in chambers or in camera.

(2) The court shall not make an order that proceedings mentioned in subsection (1) shall be held in chambers or in camera unless the court is satisfied that the order is reasonably necessary in the interests of -

(a) the security, defence or external relations of the HKSAR; or

(b) the administration of justice.

(3) In this section, "court" () includes a magistrate."

Schedule 1 By deleting "SCHEDULE 1 [ss. 2(1) & 18]" and substituting "SCHEDULE [s. 2(1)]".

Schedules 2 By deleting the Schedules.
and 3

Security Bureau
July 2002