

C012-E

A BILL To Further implement a decision of the Security Council of the United Nations in its Resolution 1373 of 28 September 2001 relating to measures for the prevention of terrorist acts; to implement certain of the Special Recommendations on Terrorist Financing of the Financial Action Task Force; and to provide for matters incidental thereto or connected therewith.

Enacted by the Legislative Council.

PART 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the United Nations (Anti-Terrorism Measures) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires---

"authorized officer" (獲授權人員) means a person authorized in writing under section 15(1);

"entity" (實體) means any body of persons (including individuals), whether corporate or unincorporate;

"functions" (職能) includes powers;

"funds" (資金) includes funds mentioned in Schedule 1;

"practicable" (切實可行) means reasonably practicable;

"property" (財產) includes---

(a) property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);

(b) funds;

(c) financial assets;

(d) economic resources; and

(e) funds derived or generated from property mentioned in paragraph (a), (b), (c) or (d);

"Secretary" (局長) means the Secretary for Security;

"terrorist" (恐怖分子) means a person who commits, or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act;

"terrorist act" (恐怖主義行爲)---

(a) subject to paragraph (b), means the use or threat of action where---

(i) the action---

- (A) involves serious violence against a person;
- (B) involves 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 designed seriously to interfere with or seriously to disrupt an electronic system; or
- (F) is designed 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) designed to influence 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)(F), does not include the use or threat of action in the course of any advocacy, protest, dissent or stoppage of work;

"terrorist associate" (與恐怖分子有聯繫者) means---

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

(b) a person who is designated by the Committee of the Security Council of the United Nations established pursuant to the United Nations Resolution 1267 of 15 October 1999;

"terrorist property" (恐怖分子財產) means---

(a) the property of a terrorist or terrorist associate; or

(b) any other property consisting of funds that---

(i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or

(ii) was used to finance or otherwise assist the commission of a terrorist act;

"weapons" (武器) includes---

(a) chemical, biological, radiological or nuclear weapons;

(b) any arms and related material (including ammunition, military vehicles, military equipment and paramilitary equipment);

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

(d) any goods specially designed or prepared for use, or normally used, in the manufacture or maintenance of any arms or related material mentioned in paragraph (b) or components mentioned in paragraph (c).

(2) Any reference in the definition of "terrorist act" to---

(a) an action, person or property includes an action, person or property outside the HKSAR;

(b) the Government or public includes the government, or the public, of a place

outside the HKSAR.

(3) For the purposes of this Ordinance, any proceeds of a terrorist or terrorist associate arising from a terrorist act are---

- (a) any payments or other rewards received at any time by the terrorist or terrorist associate in connection with the commission of that act;
- (b) any property derived or realized, directly or indirectly, by the terrorist or terrorist associate from any of the payments or other rewards; and
- (c) any pecuniary advantage obtained in connection with the commission of that act.

3. Application of certain provisions outside HKSAR

Sections 6, 7, 8 and 9 shall apply to---

- (a) any person within the HKSAR; and
- (b) any person outside the HKSAR who is---
 - (i) a Hong Kong permanent resident; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

PART 2

Specification of Terrorists, Terrorist Associates and Terrorist Property and Freezing of Funds

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

(1) Where the Chief Executive has reasonable grounds to believe that a person is a terrorist, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person.

(2) Where the Chief Executive has reasonable grounds to believe that a person is a terrorist associate, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person.

(3) Where the Chief Executive has reasonable grounds to believe that any property is 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) 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 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) either---

(i) the Chief Executive ceases to have reasonable grounds to believe that the person or property is a terrorist, terrorist associate or terrorist property, as the case may be; or

(ii) the Court of First Instance has granted an application under section 16 which relates to the person or 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) A notice under subsection (1), (2) or (3) which has not been revoked under subsection (6) shall expire on the 3rd anniversary of the date of its publication in the Gazette.

(8) For the avoidance of doubt, it is hereby declared that neither subsection (6) nor (7) shall 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) or (7).

5. Freezing of funds

(1) Where the Secretary has reasonable grounds to suspect that any funds held by any person are terrorist property, the Secretary may, by notice in writing specifying the funds, direct that the funds not be made available, directly or indirectly, to any person except under the authority of a licence granted by the Secretary for the purposes of this section.

(2) Where---

(a) funds are specified in a notice under subsection (1); and

(b) either---

(i) the Secretary ceases to have reasonable grounds to suspect that the funds are terrorist property; or

(ii) the Court of First Instance has granted an application under section 16 which relates to the funds, then the Secretary shall, as soon as is practicable, by notice in writing revoke the notice to the extent that it relates to the funds.

(3) A notice under subsection (1) which has not been revoked under subsection (2) shall expire on the 3rd anniversary of the date on which it was signed by the Secretary.

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

(a) neither subsection (2) nor (3) shall operate to prevent the Secretary from again exercising the Secretary's power under subsection (1) in respect of funds which have

ceased to be specified in a notice under subsection (1) by virtue of the operation of subsection (2) or (3);

(b) the revocation under subsection (2), or the expiry under subsection (3), of a notice under subsection (1) shall not affect the application of section 7 to the funds which were specified in the notice.

(5) A notice under subsection (1) or (2) shall be given to the person holding the funds concerned ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or for or on whose behalf the funds are held ("the owner").

(6) A recipient shall be treated as complying with subsection (5) if, without delay, he sends a copy of the notice mentioned in that subsection to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

PART 3

Prohibitions Relating to Terrorists, Terrorist Associates and Terrorist Property

6. Prohibition on supply of funds to terrorists and terrorist associates

A person shall not provide or collect, by any means, directly or indirectly, funds---

(a) with the intention that the funds be directly or indirectly supplied to or otherwise used by; or

(b) knowing or having reasonable grounds to believe that the funds will be directly or indirectly supplied to or otherwise used by, a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate.

7. Prohibition on making funds, etc. available to terrorists and terrorist associates

No person shall, except under the authority of a licence granted by the Secretary for the purposes of this section, make any funds or financial (or related) services available, directly or indirectly, to or for the benefit of a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate.

8. Prohibition on supply of weapons to terrorists and terrorist associates

A person shall not provide or collect, by any means, directly or indirectly, weapons---

(a) with the intention that the weapons be directly or indirectly supplied to or otherwise used by; or

(b) knowing or having reasonable grounds to believe that the weapons will be directly or indirectly supplied to or otherwise used by,

a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate.

9. Prohibition on recruitment, etc. to persons specified in notices under section 4(1) and (2)

(1) A person shall not---

(a) recruit another person to become a member of, or to serve in any capacity with; or

(b) become a member of, or begin to serve in any capacity with, a person specified in a notice under section 4(1) or (2).

(2) Where a person is a member of, or is serving in any capacity with, a person specified in a notice under section 4(1) or (2) immediately before the date of publication in the Gazette of the notice, the first-mentioned person shall take all practicable steps to cease to be such a member or to cease to so serve, as the case may be.

10. Prohibition against false threats of terrorist acts

(1) A person shall not communicate or make available by any means any information which he knows or believes to be false to another person with the intention of inducing in him or any other person a false belief that a terrorist act has been, is being or will be carried out.

(2) A person shall not---

(a) place any article or substance in any place; or

(b) despatch any article or substance by post, rail or by any other means of sending things from one place to another,

with the intention of inducing in another person a false belief that---

(c) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or

(d) the article contains or the substance consists of---

(i) any dangerous, hazardous, radioactive or harmful substance;

(ii) any toxic chemical; or

(iii) any microbial or other biological agent, or toxin,

that is likely to cause death, disease or personal injury or damage to property.

(3) For the purposes of subsections (1) and (2), a reference to a person inducing in another person a false belief does not require the first-mentioned person to have

any particular person in mind as the person in whom he intends to induce the false belief.

PART 4

Disclosure of Knowledge or Suspicion that
Property is Terrorist Property

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

(1) Where a person knows or has reasonable grounds to suspect that any property is terrorist property, then the person shall disclose to an authorized officer the information or other matter---

(a) on which the knowledge or suspicion is based; and

(b) as soon as is practicable after that information or other matter comes to the person's attention.

(2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 6 or 7 (whether before or after the disclosure), and the disclosure relates to that act, the person does not commit an offence under section 14(1) in respect of that contravention if---

(a) that disclosure is made before the person does that act and the person does that act with the consent of an authorized officer; or

(b) that disclosure is made---

(i) after the person does that act;

(ii) on the person's initiative; and

(iii) as soon as it is practicable for the person to make it.

(3) A disclosure referred to in subsection (1)---

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of---

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(4) Where a person knows or has reasonable grounds to suspect that a disclosure has been made under subsection (1), the person shall not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.

PART 5

Evidence, Forfeiture and Offences

12. Obtaining of evidence and information, etc.

(1) Schedule 2 shall have effect in order to---

(a) facilitate the obtaining of evidence and information for the purpose of securing compliance with or detecting evasion of this Ordinance;

(b) facilitate the obtaining of evidence in relation to the commission of an offence under this Ordinance.

(2) Schedule 3 shall have effect in order to enable 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---

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

(b) 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.

13. Forfeiture of certain terrorist property

(1) The Court of First Instance may, if satisfied on an application made by or on behalf of the Secretary for Justice that any property specified in the application is terrorist property---

(a) mentioned in paragraph (a) of the definition of "terrorist property" and which also---

(i) in whole or in part directly or indirectly represents any proceeds arising from a terrorist act;

(ii) is intended to be used to finance or otherwise assist the commission of a terrorist act; or

(iii) was used to finance or otherwise assist the commission of a terrorist act; or

(b) mentioned in paragraph (b) of the definition of "terrorist property", order, subject to subsection (2), the forfeiture of the property.

(2) Where the Court of First Instance makes an order under subsection (1) in respect of any property, the Court shall specify in the order so much, if any, of the property in respect of which the Court is not satisfied as mentioned in that subsection.

(3) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the property concerned is connected.

(4) The standard of proof on an application under this section shall be on the balance of probabilities.

(5) Subject to section 17(3), Order 115, rule 29, of the Rules of the High Court (Cap. 4 sub. leg.) shall, with all necessary modifications, apply to and in relation

to subsection (1) as it applies to and in relation to section 24D(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

14. Offences

(1) Any person who contravenes section 6, 7 or 8 commits an offence and is liable---

(a) on conviction on indictment to a fine and to imprisonment for 14 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years.

(2) A person who contravenes a notice under section 5(1) commits an offence and is liable---

(a) on conviction on indictment to a fine and to imprisonment for 7 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(3) A person who contravenes a requirement under section 5(5) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.

(4) A person who contravenes section 9(1) or (2) or 10(1) or (2) commits an offence and is liable---

(a) on conviction on indictment to a fine and to imprisonment for 7 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(5) A person who contravenes section 11(1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(6) A person who contravenes section 11(4) commits an offence and is liable--

(a) on conviction on indictment to a fine and to imprisonment for 3 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7) In proceedings against a person for an offence under subsection (6), it is a defence to prove---

(a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in section 11(4); or

(b) that he had lawful authority or reasonable excuse for making that disclosure.

(8) Any person who is guilty of an offence under section 3(b) or (d) of Schedule 2 is liable---

(a) on conviction on indictment to a fine and to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) Any person who is guilty of an offence under section 3(a) or (c) of Schedule 2, or section 2(8) of Schedule 3, is liable on conviction to a fine at level 6 and

to imprisonment for 6 months.

(10) Where any body corporate is guilty of an offence under this Ordinance, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(11) Summary proceedings for an offence under this Ordinance, being an offence alleged to have been committed outside the HKSAR, may be commenced at any time not later than 12 months from the date on which the person charged first enters the HKSAR after committing the offence.

(12) No proceedings for an offence under this Ordinance shall be instituted in the HKSAR except by or with the consent of the Secretary for Justice.

PART 6

Miscellaneous

15. Authorization of officers and delegations

(1) The Secretary may authorize in writing any person to be an authorized officer for the purposes of this Ordinance.

(2) The Chief Executive may, to such extent and subject to such restrictions and conditions as the Chief Executive may think proper, delegate or authorize the delegation of any of the Chief Executive's functions under this Ordinance to any person, or class or description of persons, approved by the Chief Executive, and references in this Ordinance to the Chief Executive shall be construed accordingly.

(3) The Secretary may, to such extent and subject to such restrictions and conditions as the Secretary may think proper, delegate or authorize the delegation of any of the Secretary's functions under this Ordinance to any person, or class or description of persons, approved by the Secretary, and references in this Ordinance to the Secretary shall be construed accordingly.

16. Applications to Court of First Instance

(1) Where a notice has been published under section 4(1), (2) or (3), or a notice given under section 5(1), then---

(a) in the case of a notice under section 4(1) or (2), any person specified in the notice, 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 notice to be revoked to the extent that it relates to the person so specified;

(b) in the case of a notice under section 4(3), any person by, for or on behalf of whom any property specified in the notice is 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 property so specified;

(c) in the case of a notice under section 5(1), any person---

(i) by, for or on behalf of whom any funds specified in the notice are held; or

(ii) who otherwise has an interest---

(A) in the funds so specified; and

(B) prescribed by rules made under section 17 as an interest for the purposes of this paragraph,

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)(a), (b) or (c) shall give a copy of the application and any affidavit and other relevant documents in support---

(a) to the Secretary for Justice and, in the case of an application under subsection (1)(b) or (c), 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), (b) or (c)---

(a) the presumption mentioned in section 4(5) shall not be applicable to the proceedings; and

(b) the Court of First Instance shall grant the application unless it is satisfied that---

(i) where subsection (1)(a) is applicable, the Chief Executive had and continues to have reasonable grounds to believe that the person specified in the notice concerned under section 4(1) or (2) is a terrorist or terrorist associate;

(ii) where subsection (1)(b) is applicable, the Chief Executive had and continues to have reasonable grounds to believe that the property specified in the notice concerned under section 4(3) is terrorist property;

(iii) where subsection (1)(c) is applicable, the Secretary had and continues to have 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.

17. Procedure

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

(a) with respect to applications under---

(i) section 13;

(ii) section 16;

- (iii) regulations made under section 19; or
 - (iv) Schedule 3 to a court within the meaning of that Schedule;
- (b) without limiting the generality of paragraph (a), with respect to the circumstances in which applications mentioned in that paragraph shall be---
- (i) held in camera, whether in whole or in part, in the interests of---
- (A) the security, defence or international relations of the HKSAR; or
- (B) any witnesses giving evidence in the proceedings; or
- (ii) where paragraph (a)(i), (iii) or (iv) is applicable, 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)---
- (i) with respect to persons who may be joined as a party to any proceedings arising from any of the applications mentioned in that paragraph;
 - (ii) prescribing interests for the purposes of section 16(1)(c) that enable persons to make applications under that section;
- (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) or section 5(2) of Schedule 3;
 - (b) for the purposes of reflecting a supersession mentioned in paragraph (a), amend section 13(5) or section 5(2) of Schedule 3.

18. Amendment of Schedules 1, 2 and 3

The Secretary may, by notice published in the Gazette, amend Schedule 1, 2 or 3.

19. Regulations---freezing of property

(other than funds)

- (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) Without limiting the generality of subsection (1), regulations made under this section may provide for applications to be made to, and orders to be made by, the Court of First Instance for the purposes mentioned in subsection (1).

(3) 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.

SCHEDULE 1 [ss. 2(1) & 18]

Funds

1. Gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments.
2. Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations.
3. Securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts).
4. Interest, dividends or other income on or value accruing from or generated by property.
5. Credit, rights of set-off, guarantees, performance bonds or other financial commitments.
6. Letters of credit, bills of lading and bills of sale.
7. Documents evidencing an interest in funds or financial resources, and any other instrument of export financing.

SCHEDULE 2 [ss. 12(1), 14(8) & (9) & 18]

Evidence and Information

1. Authorized officer may require person to furnish information, etc.

(1) Without prejudice to any other provision of this Ordinance or any other law, an authorized officer may request any person in or resident in the HKSAR to furnish to him any information, or to produce to him any material in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Ordinance, and any person to whom such a request is made shall comply with

it within such time and in such manner as may be specified in the request.

(2) Nothing in subsection (1) shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce material when requested so to do under this section, the magistrate or court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the material.

(4) The power conferred by this section to request any person to produce material shall include the power to take copies of or extracts from any material which is a document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of such document.

2. Issue of warrant

(1) If any magistrate or judge is satisfied by information on oath given by any police officer, customs officer or authorized officer that---

(a) there is reasonable ground for suspecting that an offence under this Ordinance has been or is being committed and that evidence in relation to the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) any material that ought to have been produced under section 1 and has not been so produced is to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorizing any police officer, customs officer or authorized officer, together with any other persons named in the warrant and any other police or customs officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises or, as the case may be, the vehicle, ship or aircraft.

(2) Before or on exercising any power conferred by subsection (1), a person authorized by any such warrant shall, if requested so to do, produce evidence of his identity and authority.

(3) A person authorized by any such warrant to search any premises or any vehicle, ship or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, ship or aircraft and may seize any material found on the premises or in the vehicle, ship or aircraft or on such person that he has reasonable ground to believe to be evidence in relation to the commission of an offence referred to in

subsection (1) or any other material that he has reasonable ground to believe ought to have been produced under section 1 and may take in relation to any such material any other steps that may appear necessary for preserving it and preventing interference with it:

Provided that no person shall in pursuance of any warrant issued under subsection (1) be searched except by a person of the same sex.

(4) Where, by virtue of this section, a person is empowered to enter any premises, vehicle, ship or aircraft, he may use such force as is reasonably necessary for that purpose.

(5) Any material or article of which possession is taken under this section may be retained for a period of 3 months or, if within that period there are commenced any proceedings for an offence referred to in subsection (1)(a) to which it is relevant, until the conclusion of those proceedings.

(6) No information furnished or material produced (including any copy of or extract from any material which is a document produced) by any person in pursuance of a request made under this Schedule, and no material seized under subsection (3) shall be disclosed except---

(a) with the consent of the person by whom the information was furnished or the material was produced or the person from whom the material was seized:

Provided that a person who has obtained information or is in possession of a material only in his capacity as a servant or agent of another person may not give consent for the purposes of this paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that material in his own right;

(b) to any person who would have been empowered under this Schedule to request that it be furnished or produced;

(c) on the authority of the Chief Executive, subject to the information or material being transmitted through and with the approval of the Ministry of Foreign Affairs of the People's Republic of China, to any organ of the United Nations or to any person in the service of the United Nations or to the Government of any place outside the People's Republic of China for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to a terrorist or terrorist associate decided upon by the Security Council of the United Nations; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Ordinance.

3. Offences

Any person who---

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it;

(b) intentionally or recklessly furnishes any information, explanation or document which is false in a material particular to any person exercising his powers under this Schedule;

(c) intentionally obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade this Schedule, destroys, mutilates, defaces, secretes or removes any material,

shall be guilty of an offence.

4. Meaning of "material"

In this Schedule, "material" (物料) includes any book, document or other record in any form whatsoever, and any article or substance.

SCHEDULE 3 [ss. 12(2), 14(9), 17(1)
& (3) & 18]

Seizure and Detention of Property Suspected
to be Terrorist Property

1. Interpretation

In this Schedule, unless the context otherwise requires---

"court" (法庭) means the Court of First Instance;

"exported" (輸出), in relation to any property, includes the property being brought to any place in the HKSAR for the purpose of being exported;

"seized property" (被檢取的財產) means any property seized under section 2.

2. Powers of authorized officers

(1) For the purposes of this Ordinance, any authorized officer may---

(a) stop, board and search any ship, aircraft, vehicle or train which has arrived in the HKSAR (not being a ship of war or a military aircraft), and remain thereon as long as it remains in the HKSAR;

(b) search any person arriving in the HKSAR or about to depart from the HKSAR;

(c) search any thing imported into or to be exported from the HKSAR;

(d) stop, board and search any ship, aircraft, vehicle or train if he has reason to suspect that there is therein any terrorist property;

(e) without a warrant issued under subsection (2) where it would not be practicable to obtain such a warrant, enter and search any place or premises if he has reason to suspect that there is therein any terrorist property; or

(f) stop and search any person, and search the property of any person, if---

(i) he has reason to suspect that such person has in his actual custody any

terrorist property; or

(ii) such person is found in any ship, aircraft, vehicle, train, place or premises in which any terrorist property is found.

(2) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to suspect that in any place there is any terrorist property, or with respect to which an offence has been committed or is about to be committed against the provisions of this Ordinance, the magistrate may, by his warrant directed to any authorized officer, empower the officer by day or by night to enter the place named in the warrant and there to search for and seize, remove and detain any terrorist property.

(3) For the purpose of enabling a ship or aircraft to be searched under subsection (1)---

(a) the Commissioner of Customs and Excise or the Commissioner of Police may, by order in writing under his hand, detain a ship for not more than 12 hours or an aircraft for not more than 6 hours; and

(b) the Chief Secretary for Administration may, by order in writing under his hand, detain a ship or aircraft for further periods of not more than 12 hours in the case of a ship or not more than 6 hours in the case of an aircraft.

Any order made under this subsection shall state the times from which and for which the order is effective.

(4) Any authorized officer may seize, remove and detain any thing if he has reason to suspect that such thing is terrorist property.

(5) Any authorized officer may---

(a) break open any outer or inner door of or in any place or premises which he is empowered by this section to enter and search;

(b) forcibly board any ship, aircraft, vehicle or train which he is empowered by this section to board and search;

(c) remove by force any person or thing who or which obstructs any entry, search, inspection, seizure, removal or detention which he is empowered by this section to make;

(d) detain every person found in any place or premises which he is empowered by this section to search until the same has been searched; and

(e) detain every person on board any ship, aircraft, vehicle or train which he is empowered by this section to search, and prevent any person from approaching or boarding such ship, aircraft, vehicle or train, until it has been searched.

(6) No person shall be searched under this section except by a person of the same sex.

(7) No person shall be searched under this section in a public place if he objects

to being so searched.

(8) Any person who intentionally obstructs any person in the exercise of his powers under this section shall be guilty of an offence.

(9) In this section---

"Commissioner of Customs and Excise" (香港海關關長) includes a Deputy Commissioner of Customs and Excise and an Assistant Commissioner of Customs and Excise;

"Commissioner of Police" (警務處處長) includes a deputy, assistant or senior assistant commissioner of police.

3. Period for which seized property may be detained

(1) Seized property shall not be detained for a period of more than 30 days unless, before the expiration of that period, the continued detention of the property is authorized by an order under subsection (2).

(2) A court may, upon application made to it by the Secretary for Justice or an authorized officer, by order authorize the continued detention of seized property where it is satisfied that---

(a) there are reasonable grounds for suspecting that the property is terrorist property; and

(b) the detention of the property is justified 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 a notice under section 5(1) of this Ordinance in respect of the property or which may result in the forfeiture or other confiscation of the property.

(3) An order under subsection (2) shall authorize the continued detention of the seized property to which it relates for such period, not exceeding 3 months beginning with the date of the order, as is specified in the order and a court, upon application made to it by the Secretary for Justice or an authorized officer and if satisfied as to the matters referred to in subsection (2)(a) and (b), may thereafter from time to time by order authorize the further detention of the property but so that---

(a) no period of detention specified in an order under this subsection shall exceed 3 months beginning with the date of the order; and

(b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).

(4) At any time while seized property is being detained by an order under subsection (2) or (3) a court may direct its release if satisfied---

(a) on an application made by---

- (i) the person from whom it was seized;
- (ii) a person by or on whose behalf it was being imported or exported; or
- (iii) a person who otherwise has an interest in it,

that there are no, or are no longer, any such grounds for its detention as are referred to in subsection (2); or

(b) on an application made by the Secretary for Justice or an authorized officer, that its detention is no longer justified.

(5) If, at any time when any seized property is being detained by virtue of an order under subsection (2) or (3), proceedings are instituted (whether in the HKSAR or elsewhere)---

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

(b) which may result in a direction being given under section 5(1) of this Ordinance in respect of the property or which may result in the forfeiture or other confiscation of the property,

the property shall not be released until the proceedings have been concluded.

4. Interest

Seized property which is money and which is detained in pursuance of an order under section 3(2) or (3) shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing thereon shall be added to the property on its release.

5. Procedure

(1) An order under section 3(2) shall provide for notice to be given to persons affected by the order.

(2) Subject to section 17(3) of this Ordinance, Order 115, rules 24, 25, 26, 27, 28, 30, 31, 32 and 33, of the Rules of the High Court (Cap. 4 sub. leg.) shall, with all necessary modifications, apply to and in relation to section 3(2), (3) and (4) as it applies to and in relation to section 24C(2), (3) and (4) respectively of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

Explanatory Memorandum

The purpose of this Bill is to implement---

(a) a decision of the Security Council of the United Nations in its Resolution 1373 of 28 September 2001 relating to measures for the prevention of terrorism; and

(b) certain of the Special Recommendations on Terrorist Financing of the Financial Action Task Force.

2. The Bill principally assists in giving effect to the Resolution by prohibiting a person within the HKSAR or, outside the HKSAR, a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR, from---

(a) supplying funds to;
(b) dealing with the property of; or
(c) supplying weapons to,
persons that engage in or support terrorist acts (see clauses 3, 6, 7 and 8 as read with the definitions of "terrorist", "terrorist act", "terrorist associate" and "entity" in clause 2(1)).

3. The Bill also---

(a) empowers the Chief Executive to specify, by notice published in the Gazette, persons and property that the Chief Executive has reasonable grounds to believe are terrorists or terrorist associates or terrorist property (see clause 4 and, also, the definitions of "funds", "property" and "terrorist property" in clause 2(1) as read with Schedule 1);

(b) empowers the Secretary for Security ("the Secretary") to issue directions in relation to funds held by any person which the Secretary has reasonable grounds to suspect are terrorist property (see clause 5);

(c) prohibits a person within the HKSAR and, in certain cases, outside the HKSAR, from recruiting a person to become a member of, or to serve in any capacity with, a person specified in a notice under clause 4(1) or (2) (see clauses 3 and 9);

(d) prohibits persons from making false threats of terrorist acts (see clause 10);

(e) requires a person to make certain disclosures to an authorized officer where the person knows or has reasonable grounds to suspect that any property is terrorist property (see the definition of "authorized officer" in clause 2(1) and clause 11);

(f) provides for the obtaining of evidence and information for the purposes of the Bill and the seizure and detention of property suspected of being terrorist property (see clause 12 and Schedules 2 and 3). It should be noted that the provisions of Schedule 2 are modelled on the provisions of the Schedule to the United Nations Sanctions (Afghanistan) Regulation (Cap. 537 sub. leg.); the provisions of section 2 of Schedule 3 are modelled on the provisions of section 52(1), (1E), (2), (3), (8), (9)(b) and (c) and (10) of the Dangerous Drugs Ordinance (Cap. 134); and the provisions of sections 3, 4 and 5 of Schedule 3 are modelled on the provisions of sections 24B, 24C(2), (3), (4) and (5), 24E and 24F of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);

(g) empowers the Court of First Instance to order the forfeiture of certain terrorist property (see clause 13 and, in particular, subclause (1) of that clause as read with the definition of "terrorist property");

(h) provides for various offences under the Bill (see clause 14);

(i) provides for persons to be authorized officers for the purposes of the Bill and for functions to be delegated under the Bill (see clause 15);

(j) provides for applications to the Court of First Instance against any notice published under clause 4(1), (2) or (3) or 5(1) and the procedure applicable to such applications (see clauses 16 and 17); and

(k) enables the Secretary to make regulations to prohibit persons from dealing with property (other than funds) that the Secretary has reasonable grounds to suspect is terrorist property (see clause 19).