

立法會
Legislative Council

LC Paper No. CB(2)2479/01-02

Ref : CB2/BC/9/01

**Paper for the House Committee meeting
on 5 July 2002**

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

Purpose

This paper reports on the deliberations of the Bills Committee on the United Nations (Anti-Terrorism Measures) Bill at its last three meetings on 28 June and 2 and 3 July 2002.

Deliberations of the Bills Committee

2. The last Bills Committee report as set out in LC Paper CB(2) 2401/01-02 covers the deliberations of the Bills Committee up to its 12th meeting on 27 June 2002. This report highlights changes made to the Administration's proposed Committee Stage amendments (CSAs) and new CSAs proposed by members at the last three meetings, and includes additional information provided by the Administration since the last report.

Definition of "terrorist act"

3. Following discussion with the Hong Kong Bar Association, Hon Margaret NG has proposed to amend the definition of "terrorist act" in clause 2(1) of the Bill. Instead of using the words "the use or threat of action" in paragraphs (a) and (b) proposed in the Administration's CSA, Miss NG's CSA proposes to substitute them by "an act or omission".

Definition of "weapons"

4. As mentioned in the earlier report, the Administration has proposed to delete paragraph (d) of the definition and amend paragraph (a) of the definition to include "chemical, biological, radiological or nuclear weapons and their precursors". Members have asked the Administration to clarify the meaning of the terms "precursors" in the new paragraph (a) and "components" in

paragraph (c) of the definition.

5. The Administration has explained that the ordinary meaning of the term "precursors" will prevail. In the context of the Bill, "precursors" will include the key substances within the stages of production from which the chemical, biological or nuclear weapons are assembled or manufactured.

6. As regards "components", the Administration notes members' concern that "components" which may form part of a weapon could have other legitimate uses. The Administration has pointed out that in order to substantiate an offence under clause 8 of the Bill, the prosecution has to prove to the court beyond reasonable doubt that the accused has the intention or knowledge to supply weapons to persons whom he knows, or has reasonable grounds to believe, are terrorists or terrorist associates. In addition, the prosecution has to prove that such component was indeed part of any arms, ammunition or military equipment. The enforcement agencies will in most cases act upon intelligence or information on possible breaches of the law. The fact that such components could be used for other legitimate purposes will in practice render the offence even more difficult to prosecute.

Safeguarding legal privilege

7. Following discussion with the Bills Committee at the meeting on 28 June 2002, the Administration has agreed to revise its CSA to clause 2. Clause 2(5) provides that nothing in the Ordinance shall require the disclosure of any items subject to legal privilege or authorise the search or seizure of any items subject to legal privilege. "Items subject to legal privilege" is defined as having the same meaning as in section 2(1) of the Organised and Serious Crimes Ordinance (Cap. 455). The Administration has advised that the same definition is also contained in section 22 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

Applications to the Court of First Instance (CFI)

8. Taking into account the comments of the Bills Committee, the Administration will move a CSA to add a new clause 2(6) to the Bill to clarify that the CFI may, of its own motion or on application, order that any person affected by an application under clauses 4A (inter partes application only), 13, 16 or 16A be joined as a party to the proceedings.

9. The Administration will also revise its proposed clause 16(2)(b) and (5)(b) to specify that the time limit for service of a copy of the application and other relevant documents, if any, to the other parties could be shorter than seven days before the date of hearing as the CFI may permit pursuant to rules of court. The rules of court will be made by the Rules Committee under the new clause 18 and subject to the scrutiny of the Legislative Council (LegCo)

under section 34 of the Interpretation and General Clauses Ordinance (Cap.1).

10. In the CSAs proposed by Hon Margaret NG, clause 16(1)(a)(iii) provides that any person whom the CFI considers to have an interest in making application for an order made under section 4A to be revoked may with leave of the CFI make such application. Similarly, clause 16(1)(b) enables any other person affected by the notice given under clause 5(1) to make an application to the CFI. On review, the Administration has agreed to revise its CSA to that effect.

11. In addition, the Administration will add a new clause 19 to provide that inter partes proceedings for applications made pursuant to clauses 4A, 13, 16, 16A or regulations under clause 17 shall be held in open court unless the court otherwise orders. As agreed by the Bills Committee, the Administration will specify under clause 19 that, in deciding whether to allow for proceedings to be held in chambers or in camera, the court shall be satisfied that in so doing, it is in the interests of security, defence or external relations of Hong Kong, or in the interests of the administration of justice.

Freezing of funds (clause 5)

12. In response to members' suggestion, the Administration will revise the new clause 5(3A) to clarify that forfeiture applications made under clause 13 may refer only to part of the funds being the subject of a freezing notice.

13. As the Administration does not agree to further reduce the length of the expiry period of the freezing notice, Hon Margaret Ng has proposed a CSA to provide that such notice which has not been revoked under subclause (2) shall expire on the 1st anniversary of the date on which it was signed by the Secretary for Security.

Prohibition on supply of funds to terrorists and terrorist associates (clause 6)

14. JUSTICE, one of the deputations which have given their views on the Bill, considers that clause 6 should be amended to accord with the United Nations Security Council Resolution (UNSCR) 1373 which requires that the person providing or collecting funds intends that the funds are to be used to carry out a terrorist act. Having regard to the views expressed, Hon Margaret Ng has proposed to delete the clause and substitute it by -

"A person shall not provide or collect, by any means, directly or indirectly, funds with the intention that the funds should be used in whole or in part in order to carry out a terrorist act."

Prohibition on making funds etc. available to terrorists and terrorist associates (clause 7)

15. Hon Margaret NG has proposed to amend clause 7 by adding a new subclause (2) to ensure that funds will be made available for obtaining legal advice or representation.

Prohibition on supply of weapons to terrorists and terrorist associates (clause 8)

16. Hon Margaret NG does not agree with the Administration's analysis that the mental element of "having reasonable grounds to believe" constitutes objective and subjective components. She has proposed CSAs to clause 8 to replace "having reasonable grounds to believe" with "believing on reasonable grounds".

Prohibition on recruitment, etc. (clause 9)

17. Hon Margaret NG agrees with JUSTICE's view that since terrorist organisations may be operating under the appearance of a legitimate organisation, knowledge that the body of persons with whom one is dealing is specified under clause 4 or 4A must be a necessary ingredient of the offence. For this reason, Miss NG has proposed CSAs to clause 9 to that effect.

Prohibition against false threats of terrorist acts (clause 10)

18. Hon Margaret NG has proposed a CSA to delete clause 10 as it is not compatible with the minimalist approach and that there is no demonstrated need for such a provision.

19. Hon Mrs Selina CHOW has indicated that the Liberal Party will consider moving a CSA to clause 10(1) to provide that the communication or making available of any information must be with the intention to cause alarm to the public or a section of the public before an offence will be committed.

Disclosure of knowledge or suspicion that property is terrorist property (clause 11)

20. JUSTICE is of the view that the formulation "having reasonable grounds to suspect" is open to abuse and does not allow for innocent mistakes, naivete, credulousness or careless conduct. It considers that it should be replaced by the twofold requirement that a person "suspects on reasonable grounds".

21. Hon Margaret NG has therefore proposed CSAs to subclause (1) by deleting "has reasonable grounds to suspect" and substituting "suspects on reasonable grounds". She holds the views that subclause (4) may have implications on the implementation of subclause (1) unless the words "has

reasonable grounds to suspect" are deleted.

22. The Administration has pointed out that there is a need for the provision to be consistent with that in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organised and Serious Crimes Ordinance (Cap. 455).

23. In response to members' questions, the Administration has clarified that clause 14(7) of the Bill sets out the defence available to a person accused of an offence relating to disclosure under clause 11(4). The Administration has further pointed out that clause 14(7) of the Bill is based on section 25A(6) of both the Organised and Serious Crimes Ordinance (Cap. 455) and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

Forfeiture of terrorist property (clause 13)

24. Taking into consideration comments made by members, the Administration has accepted Hon Albert HO's suggestion to provide that the civil standard of proof will be adopted in forfeiture proceedings. Clause 13(4) will be amended by deleting "on the balance of probabilities" and substituting "the standard of proof applicable to civil proceedings in a court of law".

25. Hon Margaret NG has proposed CSAs to clause 13 to restrict the type of terrorist property that can be forfeited.

Compensation (new clause 16A)

26. Hon Margaret NG has proposed a new clause 16A providing that the CFI shall not order compensation unless it is satisfied that the applicant has, in consequence of the relevant specification or order, suffered loss. She objects to the other conditions imposed in the Administration's proposed new clause 16A.

27. Other members have reiterated their concern about the requirement of "serious default" and urged the Administration to seriously review the provision. The Administration has explained that the proposed clause 16A is modelled on section 27 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and section 29 of the Organisation and Serious Crimes Ordinance (Cap. 455). The Administration has pointed out that it is necessary to retain the requirement of "serious default", since public funds are involved in making compensation. The Secretary for Security will conduct a review of the issue of compensation with the Secretary for the Treasury and the Department of Justice and report back to the LegCo after the passage of the Bill.

Protection of property rights

28. Members have expressed concern whether the forfeiture provision in clause 13 of the Bill and the compensation provision in the new clause 16A proposed in the Administration's CSAs are consistent with the property right protection requirement under Articles 6 and 105 of the Basic Law (BL). The Administration has provided a written explanation to the Bills Committee stating that it considers that it is consistent and that, in particular, it does not constitute a "deprivation" ("zhenyong"(徵用)) of property within the meaning of BL 105 for which compensation is payable.

29. The Administration has pointed out that under BL 105, the Hong Kong Special Administrative Region (HKSAR) shall, in accordance with law, protect the "right to compensation for lawful deprivation of ... property". The term "deprivation" in BL 105, when construed in the light of the corresponding Chinese text of "zhenyong" (徵用), arguably refers to the act where the state or the Government resumes or acquires properties due to the needs of defence or socio-economic development. In the present case, the forfeiture provision in clause 13 does not fall within the narrow meaning of "deprivation" ("zhenyong"(徵用)) of property, since it is in the nature of preventive confiscation of terrorist properties.

30. The Administration is of the view that even if a broader meaning is given to the term "deprivation", it does not, under the European human rights jurisprudence, include preventive confiscation that can be justified under the principle of proportionality with reference to overriding public interest(s). In this regard, clause 13 seeks to combat the global problem of terrorism and more specifically, terrorism financing, by way of preventive confiscation of terrorist property.

31. The Administration has further pointed out that apart from the protection of the above important public interest, the principle of proportionality requires that there be a reasonable relationship of proportionality between the means employed for the interference with private property rights and the aim sought to be realised. Under European human rights jurisprudence in relation to confiscation or forfeiture of properties, it is relevant to consider whether there are procedures which enable reasonable account to be taken of the link between the conduct of owner and breach of law and allow the owner to put his case to the responsible authorities. In this regard, a forfeiture order under clause 13 will not be made unless the court, under relevant Rules of the High Court, is satisfied that the property concerned is terrorist property and falls within the criteria laid down in clause 13. There will therefore be sufficient procedural safeguards in compliance with the principle of proportionality to protect the rights of the parties concerned.

Enforcement powers

32. In response to members' concerns about the wide powers in Schedules 2 and 3, the Administration has proposed to delete Schedules 2 and 3 to the Bill, and rely on powers of investigation, seizure and detention as are available under existing laws. Clause 12 which describes the purpose and scope of Schedules 2 and 3 and clause 15(1) which empowers the Secretary for Security to authorise persons as "authorised officers" will also be deleted.

33. In addition, clauses 17, 18 and 19 relating to procedures to be provided by rules of court, amendment of Schedules 1, 2, and 3 and power to make regulations for freezing of property (other than funds) respectively will be deleted. A new clause 17 will be added to empower the Secretary for Security to make regulations to deal with the freezing of property (other than funds), and to provide for matters such as any necessary investigative, seizure and detention powers that may be required in the future. The Administration has proposed that all of the regulations made under clause 17 will be subject to the approval of the LegCo.

34. Members have pointed out that it is highly unsatisfactory that the freezing of property (other than funds) and the provision of the necessary investigative powers, seizure and detention powers should be dealt with by way of subsidiary legislation instead of by amendment to the principal Ordinance. They understand that the relevant provisions are taken out for the time being because more time is required to work out the details and urge the Administration to introduce an amendment bill as soon as possible for LegCo's consideration.

35. The Administration has agreed to give priority consideration to introducing the relevant provisions by way of an amendment bill. The Administration will work on the details during the summer with a view to submitting the proposals, including changes, if any, to the compensation provision, to LegCo in the last quarter of 2002.

Commencement

36. Members note the Administration's intent that clauses 4A, 5, 7, 14A, 16 and 16A of the Bill would not come into operation after the passage of the Bill until the relevant rules of court have been made under the new clause 18.

37. Hon Cyd HO has pointed out that as anti-terrorism measures are quite new, other countries have also adopted a phased approach in implementation of such measures. She considers that there is a need for the provisions in the Bill to be reviewed periodically to ensure that they are in line with the international trend. She has asked the Administration to give an undertaking to that effect.

Members' concluding remarks

38. Hon YEUNG Sum has indicated that the Democratic Party supports the resumption of the Second Reading debate on the Bill on 10 July 2002 because of the need to meet international obligations. However, the Democratic Party expresses deep regret that the Administration has given notice of resumption before the Bills Committee has completed its deliberations. Mr YEUNG has stated that the Democratic Party will support Hon Margaret NG's CSAs to clause 10 and new clause 16A.

39. Hon Howard YOUNG has indicated that the Liberal Party supports the resumption of the Second Reading debate on the Bill in view of the need for the HKSAR to implement UNSCR 1373. Mr YOUNG has likewise expressed regret that the Administration has not consulted the House Committee Chairman before giving the notice of resumption. As regards the new clause 16A, Mr YOUNG has pointed out that the Liberal Party considers that if the Government is at fault, compensation should be paid to the party concerned without setting very harsh criteria to obstruct payment of compensation. He also considers that clause 10 may be amended along the lines indicated by Hon Mrs Selina CHOW.

40. Hon CHAN Kam-lam has indicated that the Democratic Alliance for Betterment of Hong Kong supports the resumption of the Second Reading debate on the Bill as there is an urgent need for enactment of the Bill in order that the HKSAR can fulfill its international obligations.

41. Hon Emily LAU has stated that the Frontier does not support the resumption of the Second Reading debate on the Bill and considers the giving of notice not in accordance with normal practice unacceptable. Ms LAU has reiterated her concern that the Administration has decided to retain clause 10 despite the views of many organisations that it is not necessary and incompatible with the minimalist approach. She has pointed out that it is very unsatisfactory that the final version of the CSAs is still not yet available one week before the date of resumption of the Second Reading debate on the Bill.

42. Hon Cyd HO has also expressed regret about the Administration giving notice of resumption before the Bills Committee has completed its deliberations. Ms HO has pointed out that the extremely tight schedule has made it impossible for Hon Margaret NG to explain her proposed CSAs or lobby support for them at the last two Bills Committee meetings. Ms HO considers that the Administration should have introduced the Bill much earlier to allow time for more thorough discussions by both members as well as community organisations and legal bodies. She is unable to support the resumption of the Second Reading debate on the Bill.

43. Six of the members present at the last meeting have voted in support of the resumption of the Second Reading debate on the Bill on 10 July 2002 while three members have voted against it.

Committee Stage amendments

44. The CSAs to be moved by the Secretary for Security as at 3 July 2002 are in **Appendix I**. The CSAs to be moved by Hon Margaret NG as at 2 July 2002 are in **Appendix II**. It should be noted that due to the absence of Hon Margaret NG from Hong Kong since 29 June 2002, the Bills Committee has not been able to discuss Miss NG's proposed CSAs at its last two meetings.

Undertakings by the Administration

45. The Administration has agreed to give the following undertakings during the resumption of the Second Reading debate or Committee Stage -

- (a) The Security Bureau will give priority consideration to introducing an amendment bill in the last quarter of 2002 to deal with the outstanding issues mentioned in paragraph 33 above;
- (b) The Security Bureau will conduct a review regarding the Bills Committee's view that the requirement for "serious default" should be removed from the compensation provision in the new clause 16A of the Bill, and to include improvements, if any, in the amendment bill mentioned in paragraph (a) above;
- (c) In exercising the delegation of power under clause 15(3), the Secretary for Security will only delegate such power to senior officers of the Security Bureau; and
- (d) The Administration will review the anti-terrorism measures set out in the Bill periodically to ensure that they are in line with the international trend (paragraph 37 above refers).

Follow-up actions by the Administration

46. The Administration has agreed to work on the outstanding provisions during the summer with a view to consulting the LegCo Panel on Security as early as possible in the new LegCo session.

Follow-up action by the LegCo Panel on Security

47. Members have agreed to the Administration's suggestion that monitoring of anti-terrorism measures should be included in the list of outstanding issues to be considered by the Panel on Security.

Recommendation

48. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 10 July 2002.

Advice Sought

49. Members are invited to note the recommendation of the Bills Committee in paragraph 48 above.

Council Business Division 2
Legislative Council Secretariat
5 July 2002

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

United Nations (Anti-terrorism Measures) Bill

Committee Stage

Amendments to be moved by the Hon Margaret Ng

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>In subclause (1) –</p> <p>(i) by deleting the definition of “terrorist act” and substituting –</p> <p>“terrorist act” () –</p> <p>(a) subject to paragraph (b), means an act or omission where –</p> <p>(i) the act is intended to –</p> <p>(A) cause death or serious bodily injury by serious violence against a person;</p> <p>(B) cause serious damage to property;</p> <p>(C) endanger a person’s life, other than that of the person committing the action;</p> <p>(D) cause a serious risk to the health or safety of the public or a section of the public;</p> <p>(E) seriously interfere with or seriously disrupt an electronic system; or</p> <p>(F) seriously interfere with or seriously disrupt an essential service, facility or system, whether public or private; and</p> <p>(ii) the act or omission is –</p> <p>(A) intended unduly to compel the Government or to intimidate the public or a section of the public with regard to its security; and</p> <p>(B) made for the purpose of advancing a political, religious or ideological cause;</p> <p>(b) in the case of paragraphs a (i) (D), (E) and (F), does not</p>

include the act or omission in the course of any advocacy, protest, dissent or industrial action.

- 5
- (a) In subclause (1), by deleting “for the purpose 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 1st 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 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.”

- 6 By deleting the clause and substituting –
- “A person shall not provide or collect, by any means, directly or indirectly, funds with the intention that the funds should be used in whole or in part in order to carry out a terrorist act.”
- 7 By deleting the clause and substituting –
- “(1) Subject to subsection (2), no person shall, except under the authority of a licence granted by the Secretary, 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 believes on reasonable grounds is a terrorist or terrorist associate.
- (2) This section shall not apply to the making available of funds or financial (or related) services to or for the benefit of any person for the purpose of obtaining legal advice or representation.”
- 8 (a) By deleting “having reasonable grounds to believe” and substituting “believing on reasonable grounds” .
- (b) By deleting “has reasonable grounds to believe” and substituting “believes on reasonable grounds” .
- 9 By deleting the whole 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, whom the first-mentioned person knows to be the body of persons 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 body of persons (including individuals), whether corporate or unincorporated –
- (a) specified in a notice under section 4(1) or (2), or an order under section 4A(2), published in the Gazette;

and

- (b) immediately before the date of publication of the Gazette,

then the first-mentioned person shall, as soon as practicable after that date, take all practicable steps to cease to be such a member.”.

10 By deleting the clause.

- 11 (a) In subclause (1), by deleting “has reasonable grounds to suspect” and substituting “suspects on reasonable grounds”.

- (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”.

13 By deleting subclause (1) and substituting –

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

- (b) mentioned in paragraph (a) of the definition of “terrorist property”

order, subject to subsection (2), the forfeiture of the property.”.

14 In subclause (4), by deleting “or 10(1) or (2)”.

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;
 - (iii) any person whom the Court of First Instance considers to have an interest in making application for an order made under section 4A to be revoked may with leave of the Court of First Instance make such application;
 - (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 affected by the notice given under section 5(1) 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)(iii) 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), (ii) or (iii), 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) or (iii) 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 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), or
 - (c) the Court of First Instance has revoked any order,

then the Court of First Instance may, on application by -

- (d) 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;
- (e) where paragraph (b) is applicable, any person by, for or on behalf of whom the property that was so specified is held;
- (f) any other person affected;

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 that the applicant has, in consequence of the relevant specification or order, suffered loss.

(3) Without prejudice to the operation of subsection (1), where-

(a) any property is seized 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 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 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 the applicant has, in consequence of such seizure or detention 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.”.