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Dear Ms Carmichael,

United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

I refer to your letter dated 21 October 2002 to the Chief Executive and am authorized to reply to it on his behalf. I note that the same letter has been addressed to Legislative Council Members.

You are concerned that legal civil activities and persons participating therein may unjustifiably fall within the definitions of “terrorist act”, “terrorist” and “terrorist associates” respectively under the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575). In this regard, we would like to reassure you that the Ordinance unambiguously stipulates that a “terrorist act” must fulfill *all* the following three criteria -

- (a) there must be the use or threat of action intended to compel the Government or to intimidate the public;
- (b) the use or threat of action is made for the purposes of advancing a political, religious or ideological cause; and
- (c) the action causes serious violence against a person; serious damage to property; or creates a serious risk to the health or safety of the public etc.

The Ordinance also clearly excludes “the use or threat of action in the course of any advocacy, protest, dissent or industrial action” from the definition of “terrorist act”. In fact, the definition is based on the definition of terrorism under the Terrorism (United Nations Measures) Order 2001 of the United Kingdom as well as the definition of terrorist activity under the Anti-Terrorism Act of Canada, and follows the international trend. Peaceful and legal demonstrations or protests will *not* constitute terrorist acts.

Regarding your comments in respect of section 5 of the Ordinance, we would like to draw your attention to section 5(9) which specifies that an application by the Chief Executive to specify a terrorist or terrorist associate shall be made *inter partes* except where the application falls within the circumstances specified in the rules of court. Section 21 further provides that such proceedings shall be held in *open court* unless the court otherwise orders in the interests of the security, defence or external relations of the HKSAR or the administration of justice. These provisions ensure that the affected person has full access to the basis of the Chief Executive’s application and enjoys the safeguards afforded by open and fair judicial procedures. In the event that a specification order is made, the affected person is entitled to appeal to the Court of Appeal to revoke the order in accordance with section 14 of the High Court Ordinance (Cap. 4). We would also add that the rules of court are subsidiary legislation subject to approval of the Legislative Council, which ensures that the rules sufficiently cater for the interests of the affected persons.

It is not uncommon to make provision in a principal ordinance to empower the Administration to draw up regulations for purposes connected with the better carrying out of the aims of the Ordinance. Such regulations are also subsidiary legislation subject to scrutiny by the Legislative Council.

We always attach great importance to comments from the public on any legislative proposals. Indeed, we have been grateful that the Bills Committee of the Legislative Council had scheduled a series of 15 meetings in scrutinizing the Ordinance before its passage, during which we had received many useful suggestions from Legislative Council Members, professional organizations as well as interested individuals. The majority of these suggestions have in fact been incorporated into the Ordinance. We are therefore satisfied that the Ordinance went through due legislative process and fully complies with the human rights provisions of the Basic Law and the International Covenant on Civil and Political Rights.

You may wish to note that United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering specifically require the prevention and suppression of the financing of *all* terrorists (not only those designated by the United Nations). We therefore cannot accept your suggested deletion of the specification provisions under section 5 of the Ordinance. With the effective judicial safeguards and appeal procedures as explained above, we respectfully disagree with your comment that “a wide range of citizens may be put at risk”.

We have decided not to publish a white bill on the legislation for implementing Article 23 of the Basic Law (BL 23), as we consider that the consultation paper which we published on 24 September 2002 already serves the purpose of seeking views on the proposals in principle to implement BL 23. We will take full account of the comments and views received as we proceed to formulate specific legislative provisions. We will also ensure that the requirements for protecting human rights under the Basic Law, the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights are fully met. Meanwhile, the consultation period on the proposals will last until 24 December 2002. We would like to take the opportunity to invite your comments on the specific proposals.

I thank you for your comments and trust that the contents of this letter have addressed your concerns.

Yours sincerely,

(Ms Manda Chan)
for Secretary for Security

c.c. Private Secretary to Chief Executive (Attn : Mr Herman Tse)
Clerk to Legislative Council Panel on Security (Attn : Mrs Sharon Tong)