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**Paper for the House Committee meeting
on 28 June 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 up to its 12th meeting on 27 June 2002. Two further meetings are scheduled for 28 June 2002 and 2 July 2002 and an addendum to this report to highlight the deliberations of the meetings on 28 June 2002 and 2 July 2002 will be provided to Members as soon as possible.

Background

2. The United Nations (UN) Security Council passed Resolution 1373 (2001) (UNSCR 1373) (**Appendix I**) at its meeting on 28 September 2001 to combat international terrorism. Acting under Chapter VII of the Charter of the United Nations, the UN Security Council has decided on certain measures to be employed and has called on all Member States to apply such measures. In accordance with Article 13(1) of the Basic Law, the Central People's Government (CPG) gave instructions to the Hong Kong Special Administrative Region (HKSAR) in October 2001 to implement the resolution.

3. HKSAR is a member and currently the President of the Financial Action Task Force on Money Laundering (FATF), an international body specialising in recommending standards and best practices in countering money laundering. Following the 11 September attacks in the United States, FATF expanded its mission to cover terrorist financing and made eight Special Recommendations (**Appendix II**) to tackle the issue. Such recommendations overlap to a certain extent with UNSCR 1373. According to the Administration, FATF members are expected to implement the Special Recommendations by mid-2002.

The Bill

4. The Bill, introduced into the Legislative Council (LegCo) on 17 April 2002, seeks to implement certain mandatory elements of UNSCR 1373 (paragraphs 1(a), (b), (c) and (d) and 2(a) of UNSCR 1373), and three recommendations of FATF (Recommendations II, III and IV).

The Bills Committee

5. At the House Committee meeting on 26 April 2002, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix III**.

6. Under the chairmanship of Hon LAU Kong-wah, the Bills Committee has held 12 meetings with the Administration up to 27 June 2002. The Bills Committee has met with 10 organisations/individuals, and has received eight written submissions from other organisations as listed in **Appendix IV**.

Deliberations of the Bills Committee

Whether there is urgency for enactment of the Bill

7. From the outset, the Administration has emphasised that it is important to have the Bill enacted before the end of the current legislative session. The Administration has pointed out that by virtue of Chapter VII of the Charter of the UN, UNSCR 1373 is binding on all Member States. As of 30 May 2002, 155 reports on the progress of implementation of UNSCR 1373 had been submitted from UN Member States and other entities to the Security Council Counter-Terrorism Committee. Member States which have not submitted a report are almost without exception those with little experience of the subject and unsophisticated law and order systems.

8. As regards the state of compliance by other jurisdictions, the Administration has informed the Bills Committee that to its knowledge, all major common law jurisdictions, such as Australia, United Kingdom, Canada, Singapore, India and United States, have already enacted laws or introduced other measures giving effect to UNSCR 1373. In addition, HKSAR's other major trading partners, like the Mainland, the European Community, France, New Zealand and Japan, have also introduced legislation to implement UNSCR 1373.

9. As regards the FATF's Special Recommendations to combat terrorist financing, the FATF required its members to complete a self-assessment against the Special Recommendations by January 2002. The assessment included a commitment to come into compliance with the Special Recommendations by

June 2002, and to put in place action plans to implement the Recommendations not already in place.

10. In the light of the above, the Administration is of the view that there may be serious reputational risk as the FATF may publicly announce the jurisdictions which fail to comply with certain Special Recommendations. The Administration considers that it will reflect badly on the HKSAR given the HKSAR's position as a major financial centre and leading role as the current President of the FATF. Apart from this, non-complying jurisdictions may also suffer from counter measures to be promulgated by the FATF. Moreover, the Administration has also pointed out that if the Bill is not passed by the end of the current LegCo session, the next earliest date it could be passed will be in October/November 2002, which will be more than one year after the terrorist attacks on 11 September 2001.

11. Some members are of the view that there is no urgency for enacting anti-terrorist legislation since Hong Kong is not a hotbed of terrorist activities. They are particularly concerned that apart from briefing the relevant LegCo Panels on the scope of the Bill and the issues to be covered by the legislation, the Administration has not conducted any public consultation. As there is no demonstrated urgency and in view of the serious implications on human rights and property rights, members consider it important to study the provisions carefully and necessary to invite relevant bodies to give their views. Such views are shared by all the deputations that have made oral representations to the Bills Committee.

Committee Stage amendments (CSAs)

12. Members are invited to note that the CSAs attached to this report have not been fully discussed by the Bills Committee at the end of its 12th meeting on 27 June 2002. The discussions on 27 June 2002 only cover CSAs to clauses 11 to 17 and therefore the CSAs to the other clauses and the Schedules are not yet discussed.

Definition of "terrorist act"

13. Under clause 2(1), the term "terrorist act" is defined as -

- "(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."

14. Members have expressed concern that the definition of "terrorist act" is too wide and would undermine an individual's civil and political rights. The Law Society of Hong Kong has also expressed concern about the wide scope of activities listed in the interpretation clause and that the definition, as drafted, is too broad as normal political activism can easily be targeted.

15. The Administration explains that the definition of "terrorist act" in the Bill is modelled on the definition of "terrorism" under the United Kingdom Terrorism (United Nations Measures) Order 2001, which in turn is modelled on the United Kingdom Terrorism Act 2000. However, paragraph (a)(i)(F) and paragraph (b) are derived from the Canadian Anti-Terrorism Act. The Administration has pointed out that the definition in the Bill is in line with the definition in anti-terrorist laws of almost all common law jurisdictions.

16. The Administration has also pointed out that the definition of "terrorist act" in the Bill follows the international consensus that a "terrorist act" must satisfy three criteria -

- (a) it involves the use of action or threat of action to influence a government or intimidate the public;
- (b) the use or threat of action is for the purpose of advancing a political, religious or ideological cause; and
- (c) the action or threat involves serious violence, serious damage to property or serious risk to public health or safety.

In addition, the definition also provides for certain exceptions in respect of advocacy, protest, dissent or stoppage of work to avoid the inadvertent inclusion of normal activities. The Administration is satisfied that the definition is consistent with the human rights provisions in the Basic Law and the Hong Kong Bill of Rights Ordinance.

17. Despite the Administration's explanations, some members remain

concerned about paragraph (a)(i)(D) and (E). Hon LEE Cheuk-yan has expressed worry as to whether industrial action by healthcare personnel or staff of, say, a telecommunications company, will be caught by the definition. He has therefore asked the Administration to extend the exclusion provided in paragraph (b) of the definition to cover paragraph (a)(i)(D) and (E) as well. Hon James TO has suggested that paragraph (a)(i)(D) should be amended to make clear that such provision is targeted at biochemical attacks, such as anthrax attacks, which will create a serious risk to the health or safety of the public or a section of the public. Members have also made a few suggestions regarding the wording of the definition to restrict its scope.

18. Taking into account the views of members, the Administration has agreed to amend clause 2 by extending the exclusion provided in paragraph (b) of the definition to cover paragraph (a)(i)(D), (E) and (F). In addition, the Administration has proposed to replace the word "involves" in paragraphs(a)(i)(A) and (B) with "causes", the word "designed" in paragraph (a)(i)(E) and (F) with "intended", the phrase "influence the Government" in paragraph (a)(ii)(A) with "compel the Government", and the expression "stoppage of work" in paragraph (b) with "industrial action".

Definition of "terrorist associate"

19. Taking into account views of members, the Administration has proposed to amend the definition of "terrorist associate" by deleting paragraph (b). Under the new definition, "terrorist associate" means an entity owned or controlled, directly or indirectly, by a terrorist.

Definition of "weapons"

20. Hon Audrey EU has expressed concern about paragraph (d) of the definition of weapons in clause 2 of the Bill as there are goods that could be used for both military and non-military purposes. On review, the Administration has proposed to delete paragraph (d) and amend paragraph (a) the definition of to read "chemical, biological, radiological or nuclear weapons and their precursors".

Deletion of the definition of "property"

21. In view of Hon Audrey EU's concern about the meaning of the terms "funds, financial assets, economic resources and funds derived from property" in the definition of "property" in clause 2 of the Bill, the Administration has proposed to delete the definition and to rely instead on the definition as set out in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1). "Property" in that section includes (a) money, goods, choses in action and land; and (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in (a).

New definition of "Committee"

22. During their discussion on the new clause 4, members have raised queries on what would happen if the Committee of the UN Security Council established pursuant to UNSCR 1267 ceases to exist. In the light of members' comments, the Administration has proposed to add a new definition of "Committee" to clause 2. Under the definition, "Committee" means the Committee of the UN Security Council established pursuant to the UNSCR 1267, or any other committee of the UN having the function to designate terrorists, terrorist associates or terrorist property. This will ensure continuity in case new committees under the UN are set up in the future having the function to designate terrorists, terrorist associate or terrorist property.

New clause 2(4)

23. The Administration has proposed to add a new sub-clause (4) to clause 2 to provide that for the purposes of this Bill, 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. "Prescribed interest" means interest in the property prescribed by rules to be made under clause 17. Hon Audrey EU has asked the Administration to clarify whether a person with prescribed interest includes bona fide purchaser for value without notice and volunteers. The Administration's reply is that these rules would be made by the Rules Committee, and they are subsidiary legislation subject to the scrutiny of the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Legal professional privilege and the right against self-incrimination

24. Having regard to members' concerns about legal professional privilege and self-incrimination in their discussions on clause 11 and Schedule 2, and notwithstanding its view that the Bill has not in substance altered the common law position governing legal professional privilege, the Administration has originally proposed to add a new subclause (5) to clause 2 declaring that, for the avoidance of doubt, nothing in this Bill shall operate to restrict the law applicable to legal professional privilege or privilege against self-incrimination.

25. Taking into consideration further comments from members and deputations that the protection for legal professional privilege may be inadequate, the Administration has revised the new subclause to stipulate that nothing in this Bill shall require a legal practitioner to disclose any privileged information or restrict the privilege against self-incrimination. In addition, new subclauses (6) and (7) will be added to provide what does or does not constitute privileged communication.

New clause 2(8)

26. The Administration has proposed to add a new subclause (8) to clause 2 to make it clear that there is an avenue for further appeal to the Court of Appeal in respect of any judgment or order of the Court of First Instance (CFI) arising from inter partes proceedings under the proposed new clause 4A(1), or under clauses 13, 16 or the proposed new clause 16A.

Specification of persons and property as terrorist, terrorist associates or terrorist property (clause 4)

27. Clause 4 empowers the Chief Executive (CE) to specify, by notice published in the Gazette, persons and property that CE has reasonable grounds to believe are terrorists, terrorist associates or terrorist property. Such notice is not subsidiary legislation. It would be presumed, in the absence of evidence to the contrary, that the persons and property specified in such notice are terrorists, terrorist associates or terrorist property. Such notice would, unless revoked, expire on the third anniversary of the date of its publication in the Gazette.

28. Whilst appreciating the need for an expeditious means of achieving the objectives of UNSCR 1373, members are very concerned that the power given to CE is too wide, and there are insufficient safeguards to prevent undue impairment of rights. The proposed system does not require any prior judicial authorisation, and it is left for an affected individual to bring an application before a judge to have the specification by CE reviewed in the CFI. Members have pointed out that the person concerned could be totally unaware that he is involved in any terrorist activities or financing. Under the proposed system, the unwary person would have no knowledge of the grounds for the specification by CE, and it would be difficult for him to refute the specification or provide relevant information to support his application to have the notice revoked under clause 16.

29. Members have suggested that CE should first obtain a court order before publishing by notice in the Gazette that a certain person or property is a terrorist, terrorist associate or terrorist property. The application for a court order should contain the reasons for the specification so that the person being specified knows the reasons for the specification when making the objection.

30. The Administration explains that the reasons for empowering CE and the Secretary for Security under clauses 4 and 5 of the Bill are as follows -

- (a) consistent with the designations made to date by the UN Security Council Committee, it is likely that terrorist or terrorist associates who need to be specified will be outside Hong Kong and in circumstances where it would not be feasible to serve notice of a

proposed specification; and

- (b) even when a suspected terrorist is in Hong Kong, urgent action is needed to protect public safety and given the swiftness with which terrorist funds can be moved, to ensure that terrorist funds are not moved or transferred.

31. To address members' concern, the Administration has proposed to replace clause 4 by new clauses 4 and 4A. The new clauses differentiate between terrorists, terrorist associates and terrorist property designated by a UN Security Council Committee, and persons whom CE has reasonable grounds to believe are terrorists or terrorist associates and property which CE has reasonable grounds to believe is terrorist property.

32. The new clause 4 will enable CE to publish a notice in the Gazette specifying the name of the person or property if such person or property is designated by a UN Security Council Committee as a terrorist, terrorist associate or terrorist property. To address the concern of members, clause 4(6) provides that, where a specified person or property ceases to be designated by the UN Security Council Committee, the notice is deemed to be revoked to the extent that it relates to the person or property immediately upon the cessation of the designation. CE shall for information purposes, publish as soon as practicable a notice in the Gazette stating the fact of such revocation.

33. The original proposed clause 4A provides for the Secretary for Justice to make an application, on behalf of CE, to the CFI for an order to specify a person or property as a terrorist, terrorist associate or terrorist property. The CFI shall only make the order if it is satisfied, on the balance of probabilities, that the person or property is a terrorist, terrorist associate or terrorist property, as the case may be. CE shall then arrange the court order to be published in the Gazette. If CE 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, then the Secretary for Justice may, on behalf of CE, make an application to the CFI for the order to be revoked to the extent that it relates to that person or property.

34. Taking into consideration the views of members on the role of the Secretary for Justice in making such applications, the Administration has agreed to delete the references to the Secretary for Justice in the proposed new clause 4A. CE may make an application to the CFI and if CE 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, then CE shall make an application to the CFI for the order to be revoked.

35. The new clause 4A(9) makes it clear that all applications under clause 4A(1) shall be made inter partes, except in circumstances to be prescribed by

rules of court made under clause 17(1)(b)(ii). The Administration explains that the Rules Committee will decide whether specific rules or procedures for such application should be made, for example, to cater for applications made ex parte.

36. Members consider that the three-year expiry period for the specification by CE originally proposed under new clause 4A is too long and have asked the Administration to shorten it. Clause 4A(8) now provides that such specifications, if not otherwise revoked, will expire after two years. Some members have suggested adding a provision to the effect that there should be a material change in circumstances before CE could re-specify a person as a terrorist, terrorist associate or terrorist property. The Administration has pointed out such a provision is unnecessary as any application to re-specify a person or property using the same grounds which have been revoked or expired would invariably be thrown out by the court, or would run the risk of contempt.

Notices issued by the Secretary for Security under clause 5

37. Clause 5 empowers the Secretary for Security to serve a notice to direct the holders of funds not to make those funds available to any person when she has reasonable grounds to suspect that the funds are terrorist property. The reasons for this provision are the same as those mentioned in paragraph 30 above.

38. Hon Audrey EU has asked whether any provision will be made for releasing funds for legitimate uses, such as paying staff wages. The Administration has pointed out that under clause 5(1), the Secretary for Security can grant a licence for such purpose. Members are concerned that it is unclear as to the types of expenses which will be covered by such a licence, and have asked the Administration to set out clearly the circumstances to be covered by the licence. In this connection, JUSTICE, one of the deputations which have made submissions to the Bills Committee, has pointed out that innocent third parties may be affected and there should be provision for paying for expenses such as rent of premises and ordinary human needs of family members.

39. To address members' concern, the Administration has proposed adding a new clause 14A to set out supplementary provisions applicable to licences mentioned in clauses 5(1) and 7. Clause 14A provides that the Secretary for Security can grant a licence for the affected person to use part of the funds for such purposes as reasonable living expenses and reasonable legal expenses. Hon Albert HO considers that the two circumstances quoted may not be enough to guide those who need to implement the provision. He is particularly concerned that staff wages and funds held on behalf of third parties are not mentioned. The Administration has pointed out that the provision has to be read in conjunction with new clause 16(4) which provides that any person affected by the operation of the two provisions may apply to the CFI for the

grant or variation of a licence. It is therefore of the view that the provisions offer sufficient protection.

40. As members consider that a three-year period before expiry is too long, the Administration will amend clause 5(3) to provide that the notices issued by the Secretary for Security will expire after two years. As regards members' comments that the two-year period is still too long, the Administration has explained that the two-year expiry period is needed for the purpose of collecting evidence relating to the funds concerned, and applying to the court for forfeiting the funds, including the obtaining of relevant materials from overseas jurisdictions, where applicable, through Mutual Legal Assistance arrangements. The Administration has also pointed out that the affected person can apply to the CFI to revoke the freezing notice.

41. To address concerns about the possibility of abuse of the process, a new clause 5(3B) has been added to provide that, where a notice has otherwise expired, the Secretary for Security shall not again exercise the power under clause 5(1) unless there has been a material change in the grounds for freezing such funds.

Prohibition on recruitment, etc. to persons specified in notices (clause 9)

42. Hon Margaret NG has asked the Administration to clarify whether the expression "to serve in any capacity with" in clause 9 means that lawyers will be prohibited from providing legal service to a person specified as a terrorist or terrorist associate or whose property is specified as terrorist property under clause 4. In this connection, Miss NG has pointed out that Article 35 of the Basic Law stipulates that Hong Kong residents should have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests, or for representation in the courts, and to judicial remedies.

43. The Administration has clarified that it is not its intention to prohibit the provision of legal service, and will move an amendment to delete the words from the clause to narrow the scope of this offence provision and to add an element of knowledge before an offence under this clause would be committed.

44. In response to comments raised by Mr Simon YOUNG, Assistant Professor, Faculty of Law, The University of Hong Kong and JUSTICE on clause 9, the Administration will amend clause 9 to limit the ambit of the clause to recruitment of persons to become members of bodies of persons which the recruiter knows or has reasonable grounds to believe have been specified.

Prohibition against false threats of terrorist acts (clause 10)

45. Members note that the prohibition against making false threats of

terrorist acts in clause 10 is outside the scope of UNSCR 1373 and FATF. Since the Administration has emphasised that a minimalist approach is adopted to implement the relevant requirements, some members have questioned the need to include such a provision. In particular, Hon Emily LAU is concerned whether it equates to prohibition of publication of false news which aroused strong opposition from the press when attempts were made to introduce similar provisions in the past decade. Ms LAU has pointed to the concern expressed by two journalists associations about clause 10(1), and the view of JUSTICE and the Law Society of Hong Kong that the clause 10 should be deleted in the absence of any demonstrated need for such legislation.

46. The Administration explains that clause 10 is proposed to deal with deliberate and wilful acts to disseminate false news which are calculated to cause confusion. In order to substantiate an offence under clause 10(1), the prosecution will have to prove to the court that -

- (a) the person who communicated or made available the false information actually knew or believed that the information was indeed false; and
- (b) this person had the intention of inducing in another person a false belief that a terrorist act has been, is being or will be carried out.

Both elements have to be proved beyond reasonable doubt by the prosecution.

47. The Administration has stressed that the provision is not directed against inaccurate reporting by journalists and will not suppress freedom of the press. Rather, it is directed against malicious "hoax" actions. Since section 28 of the Public Order Ordinance (Cap. 245) deals with bomb hoaxes only, the Administration considers that clause 10 is necessary to prevent and deter hoaxes which are intended to cause panic and confusion.

48. Members note that a similar offence is provided under the Singapore United Nations (Anti-Terrorism Measures) Regulations 2001. As regards similar offences in other overseas legislation, section 114 of the UK Anti-Terrorism, Crime and Security Act 2001 deals with hoaxes involving noxious substances or things. The section criminalises a person who communicates any information which he knows or believes to be false with the intention of inducing in a person anywhere in the world a belief that a noxious substance is likely to be present in any place and thereby endanger human life or create a serious risk to human health. The section also makes it an offence if a person places anything in a place or sends any substances with the intention of inducing a belief that it is likely to be (or contain) a noxious substance.

49. For the avoidance of doubt, the Administration has proposed to add a subclause (4) to clause 10 to provide that clause 10 does not restrict the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap.

1) which deals with the search and seizure of journalistic material. The Administration has agreed to move the subclause (4) to clause 2.

50. Hon Emily LAU remains of the view that clause 10 should be deleted and intends to propose CSAs to delete the clause.

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

51. FATF Special Recommendation IV requires financial institutions and other entities subject to anti-money laundering obligations to make reports when they suspect or have reasonable grounds to suspect that funds are linked to or used for terrorist acts. Clause 11 gives effect to this recommendation by requiring a person to make a report if he knows or has reasonable grounds to suspect that property is terrorist property.

52. As similar proposals on disclosure of knowledge or suspicion are being studied by the Bills Committee on the Drug Trafficking and Organised Crimes (Amendment) Bill 2000 (the other Bills Committee), members have made reference to the deliberations of the other Bills Committee in respect of the mental element of "having reasonable grounds to suspect".

53. The Drug Trafficking and Organised Crimes (Amendment) Bill 2000 makes a number of proposals to increase the effectiveness of Hong Kong's money laundering legislation. It includes, among other things, changing the test for requiring a disclosure under section 25A(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance and of the Organised and Serious Crimes Ordinance from "knows or suspects" to "knows or has reasonable grounds to suspect".

54. Members note that the Hong Kong Association of Banks, the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong Society of Accountants, the Hong Kong Trustees Association and the Federation of Insurers have made submissions to the other Bills Committee expressing their concerns about the proposed amendments. They have pointed out that using the mental element of "having reasonable grounds to suspect" may cast the net too wide and innocent people may be caught. In addition, the requirement for disclosure of suspicious transaction will impose an extremely onerous burden on accountants, solicitors and financial institutions.

55. Some members of the other Bills Committee have pointed out that using the mental element of "having reasonable grounds to suspect" for the disclosure of suspicious transaction offence will mean that persons may well be convicted because they harbour no suspicion about a certain set of circumstances. They are concerned that the subjective mental state of the defendant will play little part in establishing that person's guilt. They consider that the proposed section 25A of the Organised and Serious Crimes Ordinance and Trafficking

(Recovery of Proceeds) Ordinance will impose a statutory duty on a person to suspect if a certain set of circumstances comes to his knowledge, but the elements constituting "reasonable grounds to suspect" are not clear.

56. Members share the concerns of the other Bills Committee. Hon Eric LI has pointed out that the Administration has failed to convince the relevant sectors. In addition, he has highlighted the need for thorough consultation and discussion with the relevant sectors before any legislation affecting the financial sector is introduced. He has also pointed to the need for objective factors and other relevant indicators to be drawn up as guidelines for financial institutions and other relevant sectors, especially those which do not have any code of practice.

57. Hon Audrey EU considers that since the provision is mainly targetted at accountants and lawyers, it is more appropriate to bind the professionals concerned by their codes of practice rather than to impose a criminal sanction for non-disclosure. She has pointed out that as professional negligence could have serious consequence, the same aim could be achieved through provisions in the code of practice of the relevant professions. In addition, Ms EU considers that the public, and in particular staff of the financial institutions concerned, should be educated on the need to report.

58. Hon Margaret NG and Hon Albert HO have both expressed concern about the disclosure expected of lawyers in respect of the affairs of their clients and the implications on the traditional lawyer-client relationship. Ms NG proposes a new clause 11A expressly providing that nothing in the Bill shall create powers, obligations or liability in respect of privileged communications or to restrict the privilege against self-incrimination.

59. Members note that clause 11 imposes an obligation on any person, which goes further than what FATF Special Recommendation IV requires. The Administration explains that clause 11 seeks to facilitate action on freezing of funds and forfeiture of certain terrorist property pursuant to clauses 5 and 13. It has pointed out that the UK Anti-Terrorism, Crime and Security Act 2001 amends the Terrorism Act 2000 by adding a new section which includes a similar reporting requirement upon any person.

60. To address members' concerns, the Administration has proposed to move an amendment to clause 11 to change the mental element for the reporting requirement to "knows or suspects". Members note that the relevant professional organisations have expressed support for this approach. In addition, a new clause 11(3A) will be added to protect staff who made disclosure to their compliance officers from liability under clause 11.

Criminality of directors and officers of corporate bodies (clause 14(10))

61. Clause 14 sets out all the offences and penalties under the Bill. Taking

into consideration the views regarding criminality of directors and officers of bodies corporate in sub-clause (10), the Administration has proposed to delete the sub-clause. The issue of criminality of directors and officers of bodies corporate will be dealt with in accordance with section 101E of the Criminal Procedure Ordinance (Cap. 221).

Application to the CFI (clause 16)

62. Clause 16 originally provides for the right to apply to the CFI in order to challenge decisions made by CE to specify terrorists, terrorist associates or terrorist property under clause 4(1), (2) or (3) and notices issued by the Secretary for Security to freeze funds under clause 5(1).

63. Consequent upon the proposed amendments to clause 4, the Administration has initially proposed to amend clause 16 to provide the right to apply to the Court of Appeal in order to challenge decisions made by the CFI under new clause 4A(2) and notices given by the Secretary for Security to freeze funds under clause 5(1). It also requires the applicant to give a copy of the application and other relevant supporting documents, if any, to the Secretary for Justice.

64. Members have suggested that such applications should be made to the CFI instead of the Court of Appeal as it is inappropriate for the Court of Appeal to perform a fact-finding role. In addition, by having a single avenue of appeal in the CFI, it allows for appeals to the Court of Appeal. In the light of members' comments, the Administration has agreed to further amend clause 16 to provide for the right to apply to the CFI to challenge decisions made under new clause 4A(2) and notices given by the Secretary for Security to freeze funds under clause 5(1).

Compensation (new clause 16A)

65. As specifying someone as a "terrorist" or "terrorist associate" and something as "terrorist property" has serious implications, members consider that there should be a provision for compensation if it turns out that the specification is unjustified. Similarly, it should be specified that a person, whose application to the court to revoke a notice made by the Secretary for Security is successful, would have the right to claim damages from the Government.

66. The Administration points out that the right to claim damages from the Government is available under common law. The Bill does not affect a person's statutory rights to claim damages from the Government in the event that he feels that he has been aggrieved by a specification by CE under new clause 4A or a notice by the Secretary for Security under clause 5.

67. Members note that a person who has suffered loss as a result of a

"wrong" specification in such a notice may have an action in common law for damages if, for example, the specification was not done in good faith or was done negligently. An example of a specification done negligently would be where the grounds for the notice clearly do not amount to reasonable grounds as mentioned in clause 5.

68. As regards statutory compensation, members note that section 29 of the Organised and Serious Crimes Ordinance (Cap. 455) and section 27 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) provide for the payment of compensation to the holder of property which has been effectively "frozen" in the case where there has been a serious default on the part of the authorities in relation to the criminal proceedings which could have led to the making of a confiscation order in respect of that property.

69. The Administration has accepted members' suggestion and will add a new clause 16A to provide that where a person or property has ceased to be specified under clause 4A(2) or clause 5(1), the Court of Appeal can order the Government to pay compensation in some circumstances. The Administration notes Hon Margaret NG's suggestion for a new clause 16(1)(a)(iii) and (c) in connection with revocation of court order and third party's application. However, members share the view that the requirement of "serious default" on the part of the any person concerned in the investigation or prosecution as a pre-requisite to obtaining compensation is unreasonable and would make the compensation provision meaningless. They have asked the Administration to exclude such a requirement.

70. The Administration considers that the requirement of "serious default" is a reasonable standard and is necessary to protect the interest of the Government and public revenue. It replicates existing laws referred to in paragraph 68 above. In regard to wrongful decisions that do not stem from negligence or bad faith, ex-gratia payments are available, at the discretion of the Executive, after consideration of the overall circumstances.

71. Members are very dissatisfied with the Administration's response and have asked the Administration to review the issue. Hon Audrey EU has asked the Administration to provide further explanation as to how this will be consistent with Article 6 of the Basic Law. Hon Albert HO has indicated that the Democratic Party will not support the Bill if the requirement of "serious default" is not removed from new clause 16A.

Authorisation of officers and delegation of power (clauses 2, 15 and the new Schedule 4)

72. Members have asked the Administration to make clear that the authorised officers" referred to in clauses 2 and 15 must be "public officers". The Administration has agreed to amend clauses 2 and 15 to that effect. Members agree that distinction should be made between clause 15(1) and

clause 15(2) and (3). Members also suggest that clause 15(1) be restricted to the powers under Schedules 2 and 3.

Amendments to Schedules 1, 2 and 3 (clause 18)

73. Clause 18 provides that the Secretary for Security may, by notice in the Gazette, amend Schedule 1, 2 or 3. As Schedules 2 and 3 involve considerable power in relation to obtaining evidence and information, members consider that any adjustments to the Schedules should be made by way of an amendment bill instead of subsidiary legislation. The Administration has accepted members' view and will move an amendment to delete clause 18.

Regulations - freezing of property (other than funds) (clause 19)

74. Clause 19 enables regulations to be made which would, in effect, extend the Secretary for Security's power to freeze funds under clause 5 to freeze any property. The Administration has not prepared the draft regulations as it does not see the need for freezing of property, other than funds at the present stage.

Obtaining evidence and information under Schedule 2

75. In response to members' concern, the Administration has proposed to amend section 1 of Schedule 2 to enable an authorized officer to apply to a magistrate or court for an order compelling a person to provide further information for the purpose of securing compliance with or detecting evasion of the Bill. The amendment will also provide that a person who fails to supply the information will only commit an offence if this failure is in contravention of a magistrate's order or a court order.

Committee Stage amendments

76. The CSAs to be moved by the Secretary for Security as at 26 June 2002 are in **Appendix V**. The Bills Committee has not completed clause-by-clause examination of the Bill nor scrutiny of the proposed CSAs and two further meetings will be held. An updated set of CSAs will be attached to the addendum to this report to be provided after the Bills Committee has completed scrutiny of the Bill and the CSAs.

77. A copy of the CSAs to be moved by Hon Emily LAU (paragraph 50 above refers) is in **Appendix VI**.

Recommendation

78. The recommendation of the Bills Committee will be included in the verbal report to be made by the Chairman of the Bills Committee.

Advice Sought

79. Some members of the Bills Committee are concerned that the Administration gave notice on 24 June 2002 to resume the Second Reading debate on the Bill on 10 July 2002 when it was clearly indicated at the Bills Committee meeting held on the same day that they would not support the Administration giving such notice before the Bills Committee had completed its deliberations on the Bill. These members consider that such deviation from normal practice is unacceptable and should be brought to the attention of the House Committee.

80. The Bills Committee has passed, without objection, a motion proposed by Hon Cyd HO, the wording of which is as follows -

“That this Bills Committee expresses deep regret that the Executive has given notice to resume Second Reading debate on the United Nations (Anti-Terrorism Measures) Bill on 10 July 2002 before scrutiny of the Bill has been completed, which is at variance with the established practice of the Legislative Council.”

Council Business Division 2
Legislative Council Secretariat
28 June 2002

Security Council

Distr.: General

28 September 2001

Resolution 1373 (2001)

Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:
 - (a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

Special Recommendations of the Financial Action Task Force on Money Laundering (FATF)

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalising the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

III. Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

V. International co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

VI. Alternative remittance

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through

an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

VII. Wire transfers

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

VIII. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

Appendix III**Bills Committee on United Nations (Anti-Terrorism Measures) Bill****Membership List**

Chairman	Hon LAU Kong-wah
Members	Hon Cyd HO Sau-lan
	Hon Albert HO Chun-yan
	Hon LEE Cheuk-yan
	Hon Eric LI Ka-cheung, JP
	Hon Margaret NG
	Hon Mrs Selina CHOW LIANG Shuk-ye, JP
	Hon James TO Kun-sun
	Hon CHAN Kam-lam
	Hon Andrew WONG Wang-fat, JP
	Hon Jasper TSANG Yok-sing, JP
	Hon Howard YOUNG, JP
	Dr Hon YEUNG Sum
	Hon Ambrose LAU Hon-chuen, GBS, JP
	Hon Emily LAU Wai-hing, JP
	Hon Audrey EU Yuet-mee, SC, JP
	(Total : 16 Members)
Clerk	Ms Doris CHAN
Legal Adviser	Ms Bernice WONG
Date	17 May 2002

Bills Committee on United Nations (Anti-Terrorism Measures) Bill

List of deputations

- Hong Kong Human Rights Monitor
- Amnesty International
- Hong Kong Christian Institute
- Hong Kong Confederation of Trade Unions
- The Betune House Migrant Women's Refuge
- Asia Pacific Mission for Migrants
- Asia Human Rights Commission
- JUSTICE, the Hong Kong Section of the International Commission of Jurists
- Mr Simon N M YOUNG, Assistant Professor, Faculty of Law, University of Hong Kong
- YUA Current Affairs Society

Organisations which have provided written submissions only

- The Law Society of Hong Kong
- Hong Kong Journalists Association
- The Hong Kong Federation of Insurers
- Hong Kong News Executives' Association
- Hong Kong Society of Accountants
- The Hong Kong Association of Banks

DRAFT (26.6.2002)

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) in the definition of "authorized officer", by deleting "person" and substituting "public officer";
 - (ii) by deleting the definition of "property";
 - (iii) 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
~~stoppage of work~~ industrial
action;

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

(iv) 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);"

(v) 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;

"legal practitioner" () includes a
firm in which the legal practitioner is
a partner or is held out to be a partner;

"perform" (), in relation to a
function, includes exercise;

"prescribed interest" (), in
relation to any property, means an
interest in the property prescribed by
rules made under section 17 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) It is hereby declared that nothing in this Ordinance shall operate to restrict the law applicable to -~~

~~(a) legal professional privilege; or~~

~~(b) privilege against incrimination of self."-~~

(5) Nothing in this Ordinance shall -

(a) require a legal practitioner to disclose any privileged communication; or

(b) restrict the privilege against self-incrimination.

(6) Subject to subsection (7), for the purposes of subsection (5)(a), a communication is privileged communication if -

(a) it is a confidential communication, whether oral or written, passing between -

(i) a legal practitioner in the practitioner's professional capacity and another in that capacity; or

(ii) a legal practitioner
in the practitioner's
professional capacity
and the practitioner's
client,

whether made directly or
indirectly through an agent of
either;

(b) it is made or brought into
existence for the purpose of
obtaining or giving legal advice
or assistance; and

(c) it is not made or brought into
existence for the purpose of
committing or furthering the
commission of some illegal or
wrongful act.

(7) Where information consists wholly or partly
of, or relates wholly or partly to, the receipts,
payments, income, expenditure, or financial
transactions of a specified person (whether a
legal practitioner, the practitioner's client,
or any other person), it is not a privileged
communication if it is contained in, or comprises
the whole or part of, any book, account, statement
or other record prepared or kept by the

practitioner in connection with a trust account of the practitioner.

(8) 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 -

(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."

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 Secretary for Justice may, on behalf of 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 subsection (6)(a) and 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 ~~Secretary for Justice may, on behalf of 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) On an application under subsection (5)—, the
Court of First Instance shall grant the application.

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

~~(b) the Court of First Instance shall grant~~
~~the application unless it is satisfied~~
~~that the person or property specified~~
~~in the order concerned under~~
~~subsection (2) is a terrorist,~~
~~terrorist associate or terrorist~~
~~property, as the case may be.~~

(7) Where -

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

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

(i) ~~the Court of First Instance~~
~~has granted an application~~
under subsection (6) which
relates to the person or
property, as the case may be;
or

(ii) ~~the Court of First Instance~~
~~has granted an application~~
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 made under section 17(1)(b)(ii).

~~(a) an application under subsection (1) shall be made inter partes except where the application falls within the circumstances specified in rules made under section 17(1)(b)(ii);~~

~~(b) where an application under subsection (1) is made inter partes, section 14 of the High Court Ordinance (Cap. 4) shall apply to any judgment or order under subsection (2) arising from proceedings under 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 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 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 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."

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

9 ~~(a) In the heading, by adding "or orders under section 4A(2)" after "4(1) and (2)".~~

~~(b) In subclause (1)—~~

~~(i) in paragraph (a), by deleting ", or to serve in any capacity with";~~

~~(ii) in paragraph (b), by deleting "or begin to serve in any capacity with,";~~

~~(iii) by adding "or a person specified in an order under section 4A(2) published in the Gazette" after "4(1) or (2)".~~

~~(c) By deleting subclause (2) and substituting—~~

~~"(2) Where a person is a member of—~~

~~(a) a person specified in a notice under section 4(1) or (2) published in the Gazette; or~~

~~(b) a person specified in an order under section 4A(2) published in the Gazette,~~

~~immediately before the date of publication in the Gazette, then the first mentioned person shall take all practicable steps to cease to be such a member."~~

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 body of persons
(including individuals), whether corporate or
unincorporate -

(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 adding -

"(4) For the avoidance of doubt, it is hereby declared that this section does not restrict the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1)."

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)".

~~14(10) By deleting the clause.~~

14 (a) In subclause (3), by adding ", without reasonable

excuse," after "who".

(b) By deleting subclause (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
("relevant funds") shall be held from
time to time;

(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
relevant 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) In subclause (1), by deleting "person" and substituting "public officer specified in Schedule 4".
- (b) 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 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 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.

(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) 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.~~

(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.

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

- (a) any property is seized under the provisions of Schedule 3 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 Hong Kong 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 -

- (a) there has been some serious default on the part of any person concerned with the seizure or detention of the property concerned; and
- (b) the applicant has, in consequence of such seizure or detention and the default mentioned in paragraph (a), 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."

- 17(1) (a) By deleting paragraph (a)(i), (ii), (iii) and (iv) and substituting -

- "(i) section 4A;
- (ii) section 13;
- (iii) section 16;
- (iv) section 16A;
- (v) regulations made under section 19;
- (vi) Schedule 2 to a magistrate, court or judge mentioned in that Schedule; or
- (vii) Schedule 3 to a court within the meaning of that Schedule;".

(b) By deleting paragraph (b)(ii) and substituting -

- "(ii) where paragraph (a)(i), (ii), (v) or (vii) is applicable, made ex parte;".

(c) By deleting paragraph (e)(ii) and substituting -

- "(ii) prescribing interests for the purposes of the definition of "prescribed interest";".

18 By deleting the clause.

19 By adding -

- "(2A) Without limiting the generality of subsection (1), regulations made under this section may provide for 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 the regulations in respect of any property.".

Schedule 2 (a) In section 1 -

(i) in subsection (1), by deleting everything after "evasion" and substituting "of this Ordinance.";

(ii) by deleting subsections (2) and (3) and substituting -

"(3) Where a person refuses or fails to comply with a request under subsection (1) within such time and in such manner as is specified in the request, a magistrate or court may -

(a) on application made by an authorized officer; and

(b) if satisfied that the request is for the purpose of securing compliance with or detecting evasion of this Ordinance,

make an order requiring the person, within such time and in such manner as is specified in the order, to furnish the information, or produce to an authorized officer the material, to

which the request relates."

(b) In section 3 -

(i) in paragraph (a), by deleting "request made under this Schedule by any person who is empowered to make it" and substituting "order under section 1(3)";

(ii) in paragraph (b), by deleting "exercising his powers" and substituting "performing his functions".

Schedule 3,
section 2

By adding -

"(10) For the avoidance of doubt, it is hereby declared that nothing in this section authorizes a person to examine the body cavities of another person."

New

By adding -

"SCHEDULE 4 [S. 15(1)]

SPECIFIED PUBLIC OFFICERS

Any public officer who is -

(a) a police officer;

(b) a member of the Immigration Service;

(c) a member of the Customs and Excise Service; or

(d) an officer of the Independent

Commission Against Corruption."