《2003年聯合國(反恐怖主義措施)(修訂)條例草案》委員會

目的

本文件旨在提供資料,回應委員在二零零三年十一月三日的《2003 年聯合國(反恐怖主義措施)(修訂)條例草案》(《條例草案》)委員會會議上提出的事項。

執行《聯合國(反恐怖主義措施)條例》

- 2. 就在二零零三年十月呈交委員會的文件 (CB(2)204/03-04(01)號文件)所提及的個案,我們希望重申,該犯案者被控干犯《聯合國(反恐怖主義措施)條例》(《條例》)(第 575 章)第 11(2)條所指的罪行,控方已研究過有關的證據,考慮過適用的法例,並評估過犯案者的情況。負責審理該案的裁判官接納被告的控罪是恰當的,經審裁後將被告定罪,並處被告入院令。被告已按適當的程序被起訴、受審和被處刑罰。
- 3. 雖然被告曾有精神病患紀錄,但沒有證據顯示他無行為能力構成《條例》第 11(2)條所指的犯罪意圖。在開審之前,裁判官已確定被告的狀況適宜認罪。裁判官審案後裁定被告罪名成立。

凍結恐怖分子財產

- 4. 就凍結恐怖分子財產而言(包括資金和非資金財產),我們一直認為能迅速行動至為重要。為謹慎起見,我們不宜低估現行某些安排可迅速將非資金財產變現,或將該等財產移離香港
 - (a) 某些財務機構確實可為物業提供快速的再融資安排,從而讓恐怖分子和與恐怖分子有聯繫者將其財產變現,並立即把變現所得的現金調離香港;
 - (b) 某些恐怖分子和與恐怖分子有聯繫者可能與其財務 機構建立了密切的關係,因而可作出安排迅速將其 財產變現;以及

- (c) 某些非資金財產,例如汽車、遊艇和寶石差不多可立即被運離香港。
- 5. 經考慮過司法程序會令恐怖分子或與恐怖分子有聯繫者提高警覺,而《條例》第 17 條已訂明上訴渠道,我們因此建議根據《條例》現行第 6 條凍結恐怖分子資金的機制,也應適用於恐怖分子的非資金財產。

根據新訂第 12C 和 12G 條申請搜查令

- 6. 《條例草案》新訂的第 4B 部(其中包括新訂的第 12G 條),是參照《販毒(追討得益)條例》(第 405 章)第 IVA 部而草擬的。新訂第 4B 部的作用,是確保可扣留恐怖分子財產,以待就該等財產採取進一步行動。第 405 章第 IVA 部有類似的作用,即扣留正被輸入或輸出香港的販毒得益。兩者最大的分別是:按照《條例草案》新訂的第 4B 部,有關恐怖分子財產須在裁判官發出手令的情況下才可被檢取;而按照第 405 章第 IVA 部,獲授權人員無需取得手令便可檢取有關販毒得益。兩者均訂明如要在某時限後繼續扣留有關財產,必須先經原訟法庭批准。綜合上述情況,並考慮到第 405章第 IVA 部並無申請手令的規定,我們認為由裁判官發出手令是可接受的安排。
- 7. 新訂的第 12C 條是參照《有組織及嚴重罪行條例》 (第 455 章)第 5 條和《販毒(追討得益)條例》(第 405 章)第 21 條而草擬的。按照該兩項條文,手令是由原訟法庭或區域法 院發出。

《條例草案》的詳題

8. 在最近數年向立法會提交的條例草案,其詳題的長度各有不同,某些詳題較為詳盡,某些則較短。這正反映並沒有任何規則限制詳題的長短。草擬詳題的原則是必須包含條例草案的所有內容,而其中一個做法是描述主要的法律條文。詳題也可以較為廣泛的措辭草擬,只要其中沒有"含糊或不明確的用詞"(見 Thornton 的"Legislative Drafting"第 4 版,第 195 頁)。Thornton 認為以較詳盡的方式草擬詳題是可取的做法(見"Legislative Drafting"第 193 頁,副本載

於英文版的**附件**)。Thornton 提到,如修訂的條文眾多,以簡單的方式草擬詳題是可接受的做法(見 "Legislative Drafting" 第 195 頁)。由此可見,在可行情況下以概括描述每一項條文的方式草擬詳題,是合適的做法。

有關剪報的資料

- 9. 香港一直有參與由其他地區舉辦的貿易管制研討會和會議,藉以就管制戰略物品交換意見和經驗。工業貿易署的代表參加了在二零零三年十月於東京舉行的出口管制政策研討會,與其他與會者就出口管制交換意見。
- 10. 有關的截運個案,是香港的執法機關與其他地區持續合作處理的眾多個案之一。有關貨品被稱由日本經香港出口至泰國,但涉嫌會被轉運至北韓用於有關大規模毀滅武器的用途。

保安局 二零零三年十一月

Annex

Chapter 10

Preliminary provisions

LONG TITLE

Function

Every Act begins with a long title the function of which is to indicate the general purposes of the Acr. The long title is part of the Acr, being considered, enacted, and subject to amendment, by the legislature. It is important because it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.2 It may not, however, be looked at to modify the interpretation of plain and unambiguous language.

In some countries the long title is also of importance during the legislative process and may have effect to limit debate or amendment of the Bill. It would appear that the comprehensiveness of the long title in United Kingdom statutes is to some extent a consequence of the strictness of parliamentary practice in this regard. The Australian Legislation Handbook (Ch 2.47) states that 'Cabiner some years ago expressed a desire that the long title should be precise, as an aid to the restriction of the area of debate'. But such strictness has been relaxed in other jurisdictions and this has led to briefer and less informative long titles.

Apart from parliamentary considerations, a comprehensive long title may serve a valuable purpose in assisting to communicate the intended spirit and scope of the Act. The long title presents one opportunity to the drafter to say in plain terms what he or she is about, but a purpose provision may be more effective. An abbreviated, truncated title serves no purpose other than that of a label, and that is the prerogative of the short title. For example, where an Act is to bear the short title 'Meat Industry Act', there is no value in a long title such as 'An Act relating to the Meat Industry'. A more informative long title, such as the following, might powerer serve some burboes:

An Act to encourage, facilitate and assist the development of the meat industry in the Republic, to establish the Meat Industry Corporation and provide for its functions; to

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The title is nowadays usually referred to as the long title in order to distinguish it from the short aide, and this practice is edopted in this chapter. Nevertheless, in some jurisdictions the practice is to reason for formal use the word 'tide', unqualified by 'long'.

Vactor to Som Led v Landon Society of Computators [1913] AC 107 at [28.

Re Wyler Will Trust [1961] Ch 229 at 242; Ward v Holman [1964] 2 QB 580, [1964] 2 All ER 729.

As to Canadian practice, see E. A. Driedger, Legislative Forms and Precedent (2nd edn) p153.