

Extracts of
Proposed Committee Stage Amendments to the
National Security (Legislative Provisions) Bill

25.6.2003

[Note : words in shaded italics are
new proposed amendments]

8C. Prohibition of participating in the activities of proscribed organization

(1) Any person who -

- (a) is or acts as an office-bearer or professes to be or claims to be an office-bearer of;
- (b) manages or assists in the management of;
- (c) is or acts as a member of;
- (d) attends a meeting of; or
- (e) without the prior written approval of the Secretary for Security, pays money to or gives any other form of aid to,

~~a proscribed organization~~ a local organization after it has been proscribed under section 8A is guilty of an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 years.

(1A) The following acts shall not constitute an offence under subsection (1) -

- (a) participating in any legal proceedings (whether in one's own right or as the representative of an organization which is a party to such proceedings);
- (b) seeking, providing or receiving any legal services or making or receiving any payment in respect of such services;
- (c) with the prior written approval of the

Secretary for Security, making payment to

discharge any liability; or

(d) doing any act which is incidental to an act

referred to in paragraph (a), (b) or (c).

(2) It is a defence for a person charged with an offence under subsection (1) if he proves that at the time of the alleged offence he did not know and had no reason to believe that the organization in question has been proscribed under section 8A.

(3) Without prejudice to subsection (2), it is a defence for a person charged with an offence under subsection (1) -

(a) in relation to his being or acting as an office-bearer of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such office-bearer;

(b) in relation to his being or acting as a member of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such member.

8D. Appeal against proscription

(1) Any office-bearer or member of an organization proscribed under section 8A who is aggrieved by the proscription may appeal to the Court of First Instance against the proscription within 30 days after the proscription takes effect.

~~(2) Lodging an appeal under subsection (1) and doing any incidental act shall not be regarded for the purposes of section 8C as acting as an office-bearer or member.~~

(3) On an appeal lodged under subsection (1) against a proscription, the Court of First Instance shall -

(a) if it is not satisfied that -

(i) the Secretary for Security has ~~not~~ correctly applied the law in the proscription;

(ii) the evidence is ~~insufficient~~ sufficient to prove that the organization in question falls within section 8A(2)(a), (b) or (c); ~~or and~~

(iii) the evidence is ~~insufficient~~ sufficient to justify a reasonable belief that the proscription -

(A) is necessary in the interests of national security; and

(B) is proportionate for such

purpose,

set aside the proscription; or

(b) if it is ~~not~~ so satisfied, dismiss the appeal.

(4) A proscription set aside ~~under subsection (3)~~ on an appeal under this section shall be deemed to have never been made.

(5) If in the course of any proceedings before the Court of First Instance the Court is satisfied, upon application by the Secretary for Justice, that the publication of any evidence to be given or any statement to be made in the course of the proceedings might prejudice national security, the Court may order that all or any portion of the public shall be excluded during any part of the hearing so as to avoid such publication.

(6) In the hearing of an appeal, the Court of First Instance may admit ~~such evidence as may be provided for in rules made under section 8F~~ any evidence that would, but for this subsection, not be admissible in a court of law.

(7) A party to an appeal lodged under subsection (1) may appeal to the Court of Appeal against the decision of the Court of First Instance on any ground involving a question of law.

(8) An appeal may only be lodged under subsection (7) with leave to appeal granted by the Court of First Instance or, where the Court of First Instance refuses to grant such leave, by the Court of Appeal.

MATTERS FOLLOWING PROSCRIPTION OF
AN ORGANIZATION UNDER
SECTION 8A OF THIS
ORDINANCE

1. Companies registered under
Companies Ordinance

(1) If a company registered under the Companies Ordinance (Cap. 32) is proscribed under section 8A of this Ordinance, the Registrar of Companies shall -

- (a) strike the name of such company off the register of companies kept by the Registrar; and
- (b) publish a notice of the striking off in the Gazette,

and upon the publication of the notice such company shall be dissolved.

(2) The Registrar of Companies may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.

(3) On an application of the Registrar of Companies to the Court of First Instance, a company struck off the register under subsection (1) shall be wound up and sections 360D, 360E, 360F, 360G, 360H, 360I, 360J, 360K, 360L and 360M of the Companies Ordinance (Cap. 32) shall apply to such company as

if such company were a company struck off the register and dissolved under section 360C of that Ordinance.

2. Unregistered companies under

Companies Ordinance

(1) An unregistered company within the meaning of section 326 of the Companies Ordinance (Cap. 32) which is proscribed under section 8A of this Ordinance shall for the purpose of section 327(3) of the Companies Ordinance (Cap. 32) be regarded as having been dissolved.

(2) On an application of the Registrar of Companies to the Court of First Instance, the company referred to in subsection (1) shall be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply to such company.

3. Other types of organizations

(1) If an organization that is proscribed under section 8A of this Ordinance is not registered under the Companies Ordinance (Cap. 32) but is registered under any other Ordinance, the appropriate authority shall -

- (a) cancel the registration of that organization
and (if applicable under that other Ordinance)
remove or strike its name off the relevant
register or any other similar record; and

(b) publish a notice of the cancellation in the Gazette,

and upon the publication of the notice -

(c) that organization shall be dissolved for the purposes of that other Ordinance and all other purposes; and

(d) the provisions (if any) of that other Ordinance applicable to -

(i) the dissolution of that

organization shall apply as if it were dissolved under that other Ordinance;

(ii) the winding up of organizations shall

apply to that organization.

(2) Subject to subsection (1)(d), an organization referred to in subsection (1) shall, on an application of the appropriate authority to the Court of First Instance, be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply as if such organization were an unregistered company within the meaning of section 326 of that Ordinance.

(3) The appropriate authority may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.

(4) In this section, "appropriate authority" means -

(a) where a person has authority under the relevant Ordinance to cancel the registration of the

relevant organization under that Ordinance,

that person; or

(b) in any other case, the Registrar of Companies.

4. Liabilities of members, etc. shall

continue notwithstanding

dissolution

If an organization -

(a) is dissolved pursuant to section 1(1) or 3(1); or

(b) is regarded as having been dissolved pursuant to

section 2(1),

the liability, if any, of every director, officer and member

of the organization shall continue and may be enforced as if

the organization had not been dissolved.