

立法會
Legislative Council

LC Paper No. CB(2)2600/03-04

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/02

**Bills Committee on United Nations
(Anti-Terrorism Measures) (Amendment) Bill 2003**

**Minutes of the 12th meeting
held on Tuesday, 11 May 2004 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan

Public Officers attending : Mrs Margaret CHAN
Principal Assistant Secretary for Security

Mr John Hunter
Deputy Principal Government Counsel

Ms Nilmini Dissanayake
Senior Assistant Law Draftsman

Miss Selina LAU
Government Counsel

Mr L W TING
Assistant Secretary for Security (Narcotics)

Ms Manda CHAN
Assistant Secretary for Security

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 4

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Joanne MAK
Senior Council Secretary (2) 2

I. Clause-by-clause examination of the Bill
(LC Paper No. CB(2)2281/03-04(01))

The Bills Committee deliberated (Index of proceedings at **Annex**).

2. The Administration was requested to provide a written response to the following issues raised by members at the meeting -

- (a) To re-consider providing compensation to a person wrongfully specified as terrorist or terrorist associate or whose property was wrongfully specified as terrorist property without requiring that person to prove any default on the part of the Government -
 - (i) by reversing the burden of proof so that the Government had to prove that there had been no fault on the part of any person concerned in obtaining the relevant specification; or
 - (ii) that the Court should not order compensation to be paid if the Government could satisfy the Court that the obtaining of the relevant specification was misled by the applicant's act or conduct;
- (b) To confirm whether the anti-terrorism legislation of Canada and New Zealand contained compensation provision for incorrect specification;
- (c) To explain whether a mortgagor's liability to a financial institution to pay the mortgage installments would be affected if the mortgaged property was frozen under this Ordinance;

- (d) To explain the legal effect of the freezing notice under the new section 6(1) and whether it was the same as that of a restraint order under the Organized and Serious Crimes Ordinance (Cap. 455);
- (e) To explain how "making available" in the new section 6(1) should be construed as far as non-fund property was concerned;
- (f) To explain who were the persons likely to obtain a copy of a court order made under the new section 12A(13), and what were the conditions likely to be prescribed in the rules of court in accordance with the new section 20(2)(b)(ii); and
- (g) To provide information on whether the law enforcement agencies had put in place any system to differentiate between information received pursuant to the disclosure provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), Cap. 455 and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) respectively.

II. Date of next meeting

- 3. Members noted that the next meeting would be held on 17 May 2004 at 4:30 pm.
- 4. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
1 June 2004

**Proceedings of the 12th meeting of the
Bills Committee on United Nations
(Anti-Terrorism Measures) (Amendment) Bill 2003
on Tuesday, 11 May 2004 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 005656	Chairman, ALA1, Administration, Ms Audrey EU, Mr Albert HO, Ms Miriam LAU and Miss Margaret NG	<p>Clause-by-clause examination of the Bill (the Bill and LC Paper Nos. CB(2)2043/03-04(01) & CB(2)2352/03-04(01))</p> <p><u>Clause 14 - Compensations</u> Draft Committee Stage amendments proposed by the Administration for section 18 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance) to -</p> <p>(a) clearly reflect the common law rights to compensation of an individual who had been specified as a terrorist/terrorist associate or whose property had been specified or frozen as terrorist property, and delete everything after "common law" in the proposed new section 18A; and</p> <p>(b) amend "serious default" to "default".</p> <p><u>Briefing by the Administration on its paper on review of compensation provision under the Ordinance</u> (LC Paper No. CB(2)846/02-03(04))</p> <p>The Administration to -</p> <p>(a) re-consider providing compensation to a person wrongfully specified as terrorist or terrorist associate or whose property was wrongfully specified as terrorist property without requiring that person to prove any default on the part of the Government -</p> <p>(i) by reversing the burden of proof so that the Government had to prove that there had been no fault on the part of any person concerned in obtaining the relevant specification; or</p> <p>(ii) that the Court should not order compensation to be paid if the Government could satisfy the Court that the obtaining of the relevant specification was misled by the applicant's act or conduct;</p> <p>(b) confirm whether the anti-terrorism legislation of Canada and New Zealand contained compensation provision for incorrect specification.</p>	<p style="text-align: center;">✓ (Admin to provide a written response)</p>

Time Marker	Speaker	Subject(s)	Action Required
005657 - 013443	Chairman, Administration, ALA1, Ms Miriam LAU, Miss Margaret NG and Ms Audrey EU	<u>Clause 5 - Freezing of property</u> The Administration to - (a) explain whether a mortgagor's liability to a financial institution to pay the mortgage installments would be affected if the mortgaged property was frozen under the Ordinance; (b) explain the legal effect of the freezing notice under the new section 6(1) and whether it was the same as that of a restraint order under the Organized and Serious Crimes Ordinance (Cap. 455); and (c) explain how "making available" in the new section 6(1) should be construed as far as non-fund property was concerned.	✓ (Admin to provide a written response)
013444 - 013746	Chairman Administration and	<u>Clause 15 - Regulations</u>	
013747 - 014144	Chairman Administration and	<u>Clause 16 - Procedure</u> The Administration to explain who were the persons likely to obtain a copy of a court order made under the new section 12A(13), and what were the conditions likely to be prescribed in the rules of court in accordance with the new section 20(20(b)(ii).	✓ (Admin to provide a written response)
014145 - 015344	Chairman, Administration and ALA1	<u>Clause 20 - Consequential amendments</u> (LC Paper No. CB(2)2352/03-04(01)) The Administration to provide information on whether the law enforcement agencies had put in place any system to differentiate between information received pursuant to the disclosure provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), Cap. 455 and the Ordinance respectively.	✓ (Admin to provide a written response)
015345 - 015908	Chairman, Administration and members	Date of next meeting	